

BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.76/2026

In : Complaint No.RAJ-RERA-C-N-2022-5725

Bagherwal Infraprojects Ltd., A-5/106, Indira Enclave, Neb-Sarai, New Delhi-110068.

.....Appellant-Promoter

VERSUS

1) Rajasthan Real Estate Regulatory Authority, through its Chairperson, 2nd & 3rd Floor, RSIC Building, Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur-302005.

.....Respondent

2) Sunil Namamal Kriplani, Flat No.1212, Block-B, Tripolis, Rajiv Gandhi Nagar, Kota-324005, Rajasthan.

.....Complainant-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

PRESENT:

For Appellant : Mr. Mitesh Rathore, Advocate

For Respondent No.1 : Mr. Sanjay Rahar, Advocate

For Respondent No.2 : Mr. Sunil Namamal Kriplani, respondent No.2 in person

ORDER

Reserved on 20th August, 2026

Pronounced on 25th August, 2026

Per : Justice Madan Gopal Vyas, Hon'ble Chairperson

This appeal has been filed against the notice dated 26/05/2025 issued by the learned Regulatory Authority to the promoter, respondent-UIT and

the allottees who have given their consent for modification/revision. The complainant was also directed to furnish a list of allottees along with addresses who had given their consent for map revision. This appeal is time barred by 218 days and an application under Section 44(2) of the RERA Act, 2016 has also been filed seeking condonation of delay.

2) The reasons of delay furnished in the application filed under Section 44(2) of the RERA Act, 2016 are that:-

(i) After remand of the matter by this Tribunal vide order dated 15/04/2025 passed in Appeal No.118/2023 : Bagherwal Infraprojects Ltd. Vs. Sunil Namamal Kriplani, no notice or intimation regarding listing of the case before the Authority was served upon the applicant-appellant. The applicant-appellant came to know about listing of the case before the Authority for the first time on 01/09/2025. Previously also, the matter was listed on two occasions on 26/05/2025 and 28/07/2025 but at that time also, notice was not served upon the applicant-appellant. The applicant-appellant applied for certified copies of the orders dated 26/05/2025 and 28/07/2025 then, the applicant-appellant came to know that on 26/05/2025, the notices were issued to both the parties as well as the allottees who had given consent for modification and to the Urban Improvement Trust, Kota (now Kota Development Authority).

(ii) The Regulatory Authority introduced a new official website, which was not functioning properly and the “show cause response” option was not available or accessible. Consequently, the applicant-appellant was unable to view the notice and submit the response within the stipulated time. The delay has been occurred due to the technical transition and malfunctioning

of the new website and not due to any negligence or lack of diligence on the part of the applicant-appellant.

- (iii) As per directions of this Tribunal, while remanding the matter, the concerned allottees and UIT Kota were required to be impleaded as necessary parties for the purpose of proper adjudication. However, it appears from the record that no formal impleadment application nor any amended cause title was filed by the respondent for impleading the parties. The procedural inconsistency created ambiguity regarding the status of necessary parties in the proceedings.
- (iv) In compliance of this Tribunal's order dated 15/04/2025, the alleged orders dated 26/05/2025 and 28/07/2025 were purportedly passed, which were neither uploaded on the official website nor communicated to the applicant-appellant through RMID in compliance with Regulation 26(7) of the RERA Regulations, 2024, which mandates that every order be communicated to the parties within five working days, consequently, the applicant-appellant had no knowledge of the passing of the said orders or initiation of further proceedings, and the delay in filing the present appeal has occurred solely due to such non-communication and circumstances beyond the control of the applicant-appellant.
- (v) The delay caused due to procedural confusion, absence of proper notice and the necessity of obtaining certified copies and legal advice, which consumed considerable time. Learned counsel for the applicant-appellant has placed reliance upon the judgments of the Hon'ble Supreme Court in the matters of **Esha Bhattacharjee Vs. Raghunathpur Nafar Academy : (2013) 12 SCC 649**, **B.S. Sheshagiri Setty Vs. State of Karnataka : (2016) 2 SCC 123** and **Collector, Land Acquisition, Anantnag and another Vs. Mst Katiji and others : (1987) 2 SCC 107** to argue that when the justice is

at stake, technical or pedantic approach should be adopted by courts to do justice when there is miscarriage of justice caused to public litigant.

3) *Per contra*, Respondent No.2 has filed a Preliminary Objection Application regarding maintainability of appeal contending inter-alia that the appellant's argument that the respondent did not file an application to implead the UIT Kota is completely baseless. Under Section 35 of the RERA Act, 2016, the Authority has the inherent power to investigate any matter suo motu, therefore, no formal application is required for this. This is without the statutory obligation of any party to apply. The applicant-appellant is merely playing delaying tactics to stall the ongoing legal proceedings. Therefore, the application filed under Section 44(2) of the RERA Act, 2016 be rejected.

4) Learned counsel appearing for respondent No.1-RERA has also adopted the said arguments of respondent No.2 that the appeal is not maintainable and if the authorities have violated any direction then, appellant may file contempt petition.

5) We have heard learned counsel for the parties and perused the material available on record of an application as well as the appeal.

6) The contention of the learned counsel for the applicant-appellant that non-joinder of parties as per direction of this Tribunal dated 15/04/2025 is a continuous cause of action, therefore, limitation period of 60 days provided under Section 44(2) of the RERA Act, 2016 cannot have direct impact so far as limitation is concerned. Therefore, the appeal is within limitation.

6.1) The contention of the learned counsel appearing for respondent No.1-RERA is that the appellant has not filed any application before the Regulatory Authority to implead the Kota Development Authority (“KDA”) and obtained the consent of 2/3rd allottees in the matter and if the Authority violated any directions passed by this Tribunal dated 15/04/2025 then, the applicant-appellant is free to file contempt petition but in any case, the appeal for the same is not maintainable. It is also argued by the learned counsel appearing for respondent No.1-RERA and complainant-respondent No.2-Sunil Namamal Kriplani present in person that Tribunal gave only liberty for impleadment of the KDA and other allottees but there is no mandatory direction to compel the complainant to follow the directions and complainant has already filed application to implead 2/3rd of the Allottees including KDA, therefore, appeal be dismissed with cost.

7) No sufficient cause for the delay has satisfactorily been explained in the application filed under Section 44(2) of the RERA Act, 2016 seeking condonation of delay and the Hon’ble Apex Court stressed that the delay should be condoned only upon showing “sufficient cause” but in the present case, the “sufficient cause” is missing. Merely saying that there is “continuous cause of action” and “bonafide delay” are not sufficient grounds for delay.

8) The Hon’ble Apex Court in **Basawaraj & Others Vs. The Spl. Land Acquisition Officer : 2013 Supreme (SC) 766**, has defined the word “sufficient cause” with regard to statute of limitation in paras 9 & 13 of the said judgment, as under:-

"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. (See: [Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.](#), AIR 1964 SC 1336; *Lala Matadin v. A. Narayanan*, AIR 1970 SC 1953; *Parimal v. Veena @ Bharti* AIR 2011 SC 1150; and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629.)"

"13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale".

9) The Hon'ble Apex Court in **Esha Bhattacharjee Vs. Raghunathpur**

Nafar Academy : (2013) 12 SCC 649 has laid down the following principles:-

"(i) The concept of liberal approach has to be encapsulate the conception of reasonableness and totally unfettered free play, is not allowed.

(ii) The conduct, behavior and attitude of a party relating to its 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 total go-bye in the name of liberal approach".

10) The Hon'ble Apex Court also in **Thirunagalingam Vs. Lingeswaran & Anr. : 2025 INSC 672**, ruled that delay should not be condoned merely as an act

of generosity, and that the pursuit of substantial justice must not prejudice the opposing party. Condoning inordinate delay can prejudice the opposing party, who may have acquired rights or interests in the meantime.

11) Otherwise also, the RERA Act, 2016 enacted by the legislature is a special law in which 60 days limitation is provided to decide the matter as per proviso to sub-Section (5) of Section 44 of the Act of 2016, which reads, as under:-

“44. Application for settlement of disputes and appeals to Appellate Tribunal-(5)
The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal :

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposed of the appeal within that period”.

12) Hence, allowing such delay and that too without any justifiable reason, would defeat the very purpose of the RERA Act, 2016, which has been framed to provide substantial justice to the allottees within a reasonable time.

13) Thus, the application seeking condonation of delay filed under Section 44(2) of the RERA Act, 2016 deserves to be rejected because the appellant has only challenged the impugned-notice dated 26/05/2025 by which, the notice was issued to the promoter, respondent-UIT and allottees who have given their consent for modification/revision.

The Concept of a cause of action is said to be continuing where the wrongful act is not complete once and for all, but is repeated or renewed from moment to moment, so that a fresh cause of action – and with it a fresh period of limitation – springs up on each day that the wrong subsists. The wrongdoer is treated as committing the wrong afresh at every instant during which he permits it to continue. Following are the Illustrations, which held to be continuing wrongs:-

- **Continuing trespass** – the trespasser is liable afresh for so long as he remains on the land or leaves his structure standing upon it.
- **Continuing nuisance** – every day on which the nuisance is permitted to subsist gives a fresh cause of action.
- **Obstruction of an easement or right of way** – the obstruction is renewed daily so long as it stands : *Sankar Dastidar v. Banjula Dastidar*, (2008) 18 SCC 183.

Therefore, looking to the nature of impugned-order, it is not correct to say that the continuous cause of action arises to the appellant. Hence, the application filed under Section 44(2) of the RERA Act, 2016 is rejected.

For the sake of argument if we presume that this is a matter of continuous cause of action then, so far as merit of the appeal is concerned, the Tribunal has passed the order dated 15/04/2025 specifically giving liberty in para 14 of the order, as under:-

“14. As regards to controversy of modification/revision of maps if any, in contravention or in violation of Section 14(2)(ii) of the Act, the Authority and respondent-complainant is at liberty to implead the Urban Improvement Trust, Kota and the concerned allottees who have given their consent to modifications / revisions of maps, as party afresh and the Authority may examine the matter after giving sufficient opportunity of hearing in light of interlocutory order of this Tribunal dated 27th October, 2023 and pass well-reasoned order accordingly, in accordance with the provisions of the Act of 2016”.

It is evident from the text of above order passed by this Tribunal that only liberty was granted to the respondent-complainant to implead the UIT Kota and concerned allottees as party afresh but the direction to the complainant was not necessarily mandatory in nature. Therefore, the complainant-allottee cannot be

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compelled to implead the party as directed. Further, it is revealed from the record that the complainant-allottee already filed an application to implead the UIT Kota and concerned allottees as party in the matter pending before the Regulatory Authority and the application is pending for consideration before the Regulatory Authority.

It is also pertinent to mention here that the independent jurisdiction of the Authority under Section 35 cannot be curtailed by the above order passed by this Tribunal. The Authority is at liberty to exercise its jurisdiction provided in the RERA Act, 2016 and the Rules & Regulations thereto to enquire into the matter even without application of the complainant.

14) Therefore, the appeal is also not sustainable against the impugned-notice dated 26/05/2025. Hence, dismissed.

15) There is no order as to costs.

16) The interim order or any other misc.application, if any, shall stand vacated.

17) A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur.

File be consigned to record.

**Yudhishtir Sharma,
Member (Judicial)**

**(Madan Gopal Vyas), J.
Chairperson**