IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.26 OF 2026

Elements by Shantilal Co-operative
Housing Society Ltd.
A society registered under the Goa
Co-operative Societies Act, 2001,
Having its registered address at:
Elements by Shantilal, Near Joggers
Park, Airport Road, Chicalim,
Mormugao, Goa - 403711.
Through its Secretary,
Mr. Damodar N. Kale ...Appellant

Versus

M/s. Shantilal Real Estate Services
A partnership firm,
Having its office at:
301, 3rd Floor, Anand Trade Centre,
Next to M.M.C. Building,
Vasco-Da-Gama, Goa - 403802.
Through its Partner,
Mr. Ashwin Cholera. ... Respondent

Mr. Shivraj Gaonkar with Mr. Shithil Prabhudessai, Advocates for the Appellant.
Mr. Parag Rao with Mr. Akhil Parrikar, Advocates for the Respondent.

CORAM : HITEN S. VENEGAVKAR, J.

DATE : 4th JULY 2026

JUDGMENT :

1. Heard learned Counsel for the parties.

2. Admit on the following substantial question of law:

> *Whether the Tribunal was justified in refusing to condone the delay of 167 days in filing the appeal, in the facts of the present case.*

3. This Second Appeal is directed against the judgment and order dated 16 October 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, in Miscellaneous Application No.935 of 2024 arising out of Appeal No. G-24 of 2024, whereby the Tribunal rejected the Appellant's application for condonation of delay and consequently refused registration of the Appeal.

4. The Appellant is a Co-operative Housing Society comprising allottees of the residential project "Elements by Shantilal", developed by the Respondent at Chicalim, Goa. According to the Appellant, after possession was taken, the members noticed extensive structural defects, including water leakage, seepage, dampness and deterioration in common areas as well as individual flats. The Appellant contends that the defects rendered the premises unhealthy and unsafe. Several communications were addressed to the Respondent developer. As the defects were allegedly not rectified, the Appellant obtained an expert report, which attributed the defects to poor workmanship, use of substandard materials and design defects, and also quantified the cost of remedial works.

5. On that basis, the Appellant approached the Adjudicating Officer under the Real Estate (Regulation and Development) Act, 2016, claiming compensation of Rs.1,50,00,000/- towards repairs, mental torture and harassment, invoking Sections 12, 14, 18 and 19 of the Act. By order dated

23 April 2024, the Adjudicating Officer held that the Respondent had failed to rectify the defects as contemplated under Section 14(3) of the Act and awarded Rs.25,00,000/- towards repairs and Rs.2,00,000/- towards mental torture and harassment.

6. The Appellant, being dissatisfied with the quantum, proposed to prefer an appeal before the Appellate Tribunal. The Appeal was not filed within the statutory period of sixty days prescribed under Section 44(2) of the RERA Act, which provides that an appeal shall be preferred within sixty days from the date on which a copy of the order is received, with power in the Tribunal to entertain the appeal after that period if it is satisfied that sufficient cause prevented filing within time.

7. The Appellant filed the Appeal along with an application for condonation of delay. In the application, the delay was stated to be 124 days. During hearing before the Tribunal, it was noticed that the actual delay was 167 days. The Tribunal held that the Appellant had not satisfactorily explained the delay, particularly the additional period beyond 124 days, and rejected the application.

8. Learned counsel for the Appellant submitted that the order of the Adjudicating Officer was communicated on 24 April 2024 and the statutory period expired on 23 June 2024. He submitted that the Chairman and Secretary of the Appellant Society, who were the principal office bearers entrusted with taking steps for filing the appeal, were unavailable on account of pre-scheduled domestic and international travel arising from professional and business commitments. According to him, the general body meeting could therefore be convened only on 15 September 2024, whereafter the Society resolved to file the Appeal. He submitted that thereafter time was consumed in engaging counsel at Goa and Mumbai, obtaining legal advice, preparing papers and filing the appeal.

9. Learned counsel for the Appellant further submitted that the delay was neither deliberate nor mala fide. The Appellant is not an individual litigant but a Co-operative Housing Society representing several flat purchasers who complain of serious structural defects. The appeal is only for enhancement of compensation already awarded in favour of the Society. It was further submitted that the Respondent developer has itself filed an appeal against the same order of the Adjudicating Officer, which is pending before the Tribunal. Therefore, if the Appellant's appeal is restored, both appeals can be heard together and no irreparable prejudice would be caused to the Respondent.

10. Learned counsel also submitted that when the Tribunal noticed that the delay was 167 days and not 124 days, the Appellant ought to have been granted an opportunity to explain the additional period, instead of dismissing the application on that ground. He urged that, at the highest, the error in calculation could be compensated by costs.

11. Per contra, learned counsel for the Respondent submitted that the Appellant had made incorrect and misleading statements before the Tribunal by stating that the delay was 124 days and that the appeal was filed in

October 2024, whereas the actual delay was 167 days and the appeal was filed in December 2024. According to him, this was not a mere arithmetical error but an attempt to mislead the Tribunal.

12. Learned counsel for the Respondent further submitted that the explanation founded on the travels of the Chairman and Secretary is unacceptable. A Co-operative Society cannot suspend its legal remedies merely because two office bearers are travelling. Under the cooperative law framework, the managing committee was competent to take a decision. A general body meeting was not indispensable for filing an appeal. In any case, the meeting ultimately held on 15 September 2024 was through video conferencing, which could have been done earlier. It was submitted that the Appellant failed to explain the delay after September 2024 and particularly the period between October 2024 and 7 December 2024.

13. The Respondent relied upon ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***[1], to submit that a liberal approach cannot be extended to a litigant who is negligent, lacks bona fides or gives an incorrect explanation. The Supreme Court has held that while the expression "sufficient cause" must receive a pragmatic construction, the Court must examine negligence, bona fides, conduct, prejudice and whether the explanation is fanciful or concocted.

14. The scope of the present appeal is narrow. This Court is not concerned with the correctness of the compensation awarded by the

[1] (2013) 12 SCC 649

Adjudicating Officer. Nor is this Court required to decide whether the Appellant is entitled to enhancement. The issue is confined to whether the delay ought to have been condoned so that the Appellant's statutory appeal can be heard on merits. It is well settled that when Court is examining refusal to condone delay by the Appellate Tribunal, the enquiry must remain confined to that issue and the merits of the impugned order should not be adjudicated unless delay is first condoned.

15. The principles governing condonation of delay are settled. There must be sufficient cause. The explanation must be reasonable, bona fide and not merely formal. At the same time, limitation provisions are not meant to destroy substantive rights where the delay is not deliberate and where a justice-oriented approach is warranted. The Supreme Court has reiterated that delay cannot be condoned without sufficient cause, but if the case requires adjudication on merits, the matter should not be scuttled solely on limitation unless negligence, lack of bona fides or unacceptable conduct is established.

16. In ***Pathapati Subba Reddy v. Special Deputy Collector***[2], the Supreme Court again cautioned that concepts such as "liberal approach" and "substantial justice" cannot be used to jettison limitation where the delay is unjustified. However, the same line of authority recognises that where there is no gross negligence, deliberate inaction or lack of bona fides, a liberal approach may be adopted to advance substantial justice.

[2] (2024) 12 SCC 336

17. Applying these principles, this Court finds that the Tribunal adopted an unduly narrow approach. The delay is 167 days. It is not a delay of several years. The Appellant is a Co-operative Housing Society representing several allottees. The underlying grievance concerns structural defects in a residential building. The Appellant had already succeeded before the Adjudicating Officer on liability under Section 14(3), though it disputes the adequacy of compensation. The Respondent's own appeal against the same order is pending before the Tribunal. Thus, the controversy arising from the same adjudicatory order is already sub judice before the Tribunal.

18. The Appellant's explanation is not ideal. The Society ought to have acted with greater promptitude. The Chairman and Secretary's travel cannot by itself suspend limitation. The managing committee could have acted earlier, including through virtual mode. The application also ought to have correctly stated the period of delay. These are valid criticisms.

19. However, the question is whether these deficiencies are so grave as to non-suit the Society at the threshold. On the facts of the present case, the answer must be in the negative. The material shows that the Appellant did not abandon its remedy. The delay arose in the course of internal decision-making of a collective body, convening of meeting, engagement of counsel and preparation of the appeal. The explanation may not be perfect, but it is not so inherently false or fanciful as to warrant denial of appellate adjudication.

20. The incorrect statement that the delay was 124 days instead of 167 days is a serious lapse. But in the circumstances, it appears to be an error in computation rather than a demonstrated act of fraud or deliberate misrepresentation. The Tribunal noticed the correct delay during hearing. Once the Tribunal proposed to treat the additional period as decisive, fairness required that the Appellant be permitted to explain the entire period of 167 days or file an additional affidavit. The application could have been allowed with costs, particularly when the Respondent's own appeal on the same order is pending.

21. The Respondent's contention that a general body meeting was not legally necessary may be correct as an abstract proposition. But that does not conclude the matter. The Appellant Society did in fact choose to place the issue before its members, evidently because the appeal involved a claim for substantial enhancement of compensation on behalf of allottees. Such internal procedure may indicate delay, but it does not necessarily indicate mala fides.

22. The balance of prejudice also favours condonation. Refusal to condone delay permanently shuts out the Appellant's statutory remedy for enhancement. Condonation, on the other hand, merely enables adjudication on merits. The Respondent can contest the appeal fully before the Tribunal. Since the Respondent's own appeal against the same order is pending, common hearing of both appeals would also avoid fragmented adjudication.

23. This Court is conscious that limitation cannot be diluted merely because the litigant invokes merits. But the present case is not one where the Appellant has slept over the matter for years or offered a wholly absent explanation. The lapse can be adequately balanced by imposing realistic costs and by directing expeditious disposal.

24. The substantial question of law is therefore answered in favour of the Appellant. The Tribunal was not justified in rejecting the condonation application in the peculiar facts of this case.

ORDER

(i) The Second Appeal is allowed.

(ii) The judgment and order dated 16 October 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, in Miscellaneous Application No. 935 of 2024 arising out of Appeal No. G-24 of 2024, is quashed and set aside.

(iii) The delay of 167 days in filing Appeal No. G-24 of 2024 before the Maharashtra Real Estate Appellate Tribunal is condoned, subject to the Appellant paying costs of Rs.75,000/- to the Respondent within four weeks.

(iv) If the costs are paid within the stipulated period, the Appeal shall stand restored to the file of the Tribunal and shall be registered and heard on merits.

(v) The Tribunal shall endeavour to hear the Appellant's Appeal along with the Respondent's pending appeal arising from the same order dated 23 April 2024, subject to procedural convenience and readiness of the matters.

(vi) All contentions of both sides on merits are expressly kept open.

(vii) This Court has not expressed any opinion on the correctness of the order dated 23 April 2024 passed by the Adjudicating Officer.

(viii) In the facts of the case, there shall be no further order as to costs.

HITEN S. VENEGAVKAR, J.