

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Transfer Original Petition (AT) (MRTP) No. 5 of 2017  
Old UTPE No. 90 of 2005 & CA No. 39 of 2009**

**IN THE MATTER OF:**

**Dr. (Mrs.) Manjeet Kaur Monga**

C/o Monga Clinic, Gandhi Chowk

Dalhousie, Distt. Chamba,

Himachal Pradesh

Through her legal representatives

**...Complainant**

**Vs**

**1. Mr. K. L. Suneja & Anr.**

Director

M/s Suneja Towers Pvt. Ltd.

21, Community Centre,

Yusuf Sarai, New Delhi.

**2. M/s Suneja Towers Pvt. Ltd.**

21, Community Centre,

Yusuf Sarai, New Delhi.

**3. Citi Bank N.A.**

Through its Manager

Jeevan Bharti Building

124, Connaught Circus,

New Delhi.

**....Respondents**

**Present:**

**For Appellant:** Mr. Gaurav Mitra, Shri Mayank Wadhwa and  
Ms. Shriya Raychaudhuri, Advocates.

**For Respondents:** Shri Sanjeev Sindhvani, Senior Advocate with  
Shri Aditya Narain and Shri Gaurav Sharma,  
Advocates for Respondent No. 1 & 2.

Ms. Suruchi Suri, Advocate for Respondent No. 3.

## **J U D G M E N T**

### **BANSI LAL BHAT, J.**

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'), in its amended avatar, seeks to mitigate the hardship faced by the home buyers who would find themselves at the receiving end. The ordeal to which the home buyers were subjected to heretofore could be attributed to inadequacies of law as also the greed on the part of moles within the community of real estate developers. The gullible home buyer would invest his hard earned money in the hope that his dream of owning a house/ flat/ apartment would materialize within a given time frame as chartered out by the builder least suspecting that he would be embroiled in an exercise of litigation which turns out to be expensive and time consuming with substantial justice still proving elusive. The inclusion of 'home buyer' styled as 'allottee' in the definition of 'Financial Creditor' across the ambit of I&B Code empowers the 'home buyer' to trigger Corporate Insolvency Resolution Process against the Corporate Debtor who may be the real estate developer who not only failed to deliver the house/ flat/ apartment to the investing home buyer but also defaulted in refunding the amount with interest to home buyer. This pragmatic legislation is expected to safeguard the interests of home buyers and ensure delivery of justice with lightening speed.

2. What has been stated hereinabove is not an idle formality. The case in hand displays the nightmarish experience that the original home buyer Smt. Gursharan Kaur w/o Late Dr. Agya Singh Monga resident of Dalhousie, Himachal Pradesh and her 'legal heirs'/ 'successors in interest' had to undergo with the dream home proving elusive. After having deposited three installments Smt. Gursharan Kaur died. She was succeeded by her daughter-in-law Dr. (Mrs.) Manjeet Kaur Monga, who deposited the fourth installment of price whereafter Respondent No. 2 issued allotment letter dated 21.05.1992 in her favour in respect of Flat No. D-301 (3<sup>rd</sup> Floor) having super built up area of 1375 sq. ft. in the proposed group housing scheme 'Siddharth Shila Apartments' at plot no. 24 in Vaishali Scheme, Gaziabad, Uttar Pradesh. This was followed by deposit of fifth and sixth installment of price by Dr. (Mrs.) Manjeet Kaur Monga. The sixth installment came to be deposited in September, 1993. Thereafter, there was a lull for about eight years. It was in December, 2001 that a demand notice for payment of eighth and ninth installment came to be slapped upon Dr. (Mrs.) Manjeet Kaur Monga (hereinafter referred to as 'Complainant') which was resisted by the Complainant as there was no intimation about the completion of work and delivery of possession of flat to the Complainant. The respondents, instead of informing the Complainant about the progress of construction work and delivery of possession of flat, issued a letter, albeit after about three years thereof, cancelling the allotment of flat to the Complainant. It happened on 30<sup>th</sup> April, 2005. The

Complainant had deposited seven installments upto 4<sup>th</sup> October, 1993 amounting to Rs.4,53,750/-. Alongwith the aforesaid cancellation letter, Respondent enclosed a Pay Order dated 30<sup>th</sup> April, 2005 for Rs.4,53,750/- drawn on Citibank towards full refund of payments made by the Complainant for allotment of the flat. In response to the aforesaid cancellation letter, the Complainant sent notice dated 7<sup>th</sup> September, 2005 to the Respondents through her advocate stating that though the Complainant was always ready and willing to pay the installments of price in conformity with Plan-A contained in the allotment letter but the Respondents did not keep their promise in regard to pace and quality of construction. The Complainant pointed out that even 40% construction work had not been completed till the seventh installment though she had paid Rs.4,53,750/-. The Complainant demanded the possession of the booked flat besides claiming Rs.25,00,000/- as compensation. Alongwith the notice the complainant returned the Pay Order of Rs.4,53,750/-. She also sent a cheque of Rs.1,00,000/- to signify her willingness to pay the price of the flat. Respondents replied the notice on 26<sup>th</sup> September, 2005 denying the allegations of delay in construction and accused the Complainant of default in payment of installments. It was claimed that some delay had been occasioned in completion of the project due to litigation with Ghaziabad Development Authority.

3. This led to filing of complaint by the Complainant under Section 36 of the Monopolies and Restrictive Trade Practices Act, 1969 (for short 'MRTP

Act') before the MRTP Commission praying for an enquiry into the unfair trade practice indulged in by the Respondents. She sought physical possession of the aforesaid flat or of an alternative flat of the same size and dimension. The Complainant also filed an application under Section 12A of the MRTP Act seeking to restrain the Respondents from alienating flat B-301 in 'Siddharth Shila Apartments'. Besides she filed C.A. No. 39/2009 for award of compensation of Rs.25,00,000/- in terms of Section 12B of MRTP Act claiming to be a victim of unfair trade practice at the hands of Respondents. The MRTP Commission disposed of the application filed under Section 12A of the MRTP Act restraining the Respondents from creating third party interest qua the aforesaid flat. Respondents filed reply resisting the complaint on various grounds further pleading that the Complainant was not entitled to any relief under the MRTP Act as the allegations in the complaint constituted "merely a case of the so called breach of trust". It was further pleaded that the Complainant had failed to make payment in accordance with the plan incorporated in the allotment letter and that she had, in terms of her letter dated 22<sup>nd</sup> May, 2002, shown her disinclination to take the flat by alleging breach of confidence on the part of Respondent No.2. The Notice of Enquiry issued by the Commission was resisted on similar grounds.

4. Following issues were framed by the MRTP Commission for adjudication:-

- (a) Whether the Respondent has been indulging in unfair trade practices in terms of the Notice of Enquiry?
- (b) Whether the alleged unfair trade practices are prejudicial to the interest of the Complainant and/or public in general?

5. The MRTP Act was repealed by Section 66 of the Competition Act, 2002 enforced w.e.f. 1<sup>st</sup> September, 2009. Chapter VIII-A introduced subsequently provided for establishment of an Appellate Tribunal to hear appeals against orders passed by the Competition Commission of India. The matters pending before MRTP Commission were transferred to the Competition Appellate Tribunal (for short 'COMPAT'). By virtue of order dated 29<sup>th</sup> July, 2011, COMPAT framed the following issues taking into consideration the fact that no issues had been framed in the application filed under Section 12B of the MRTP Act:-

- (a) Whether the petition filed was maintainable?
- (b) Whether the allegation of unfair trade practices as alleged has been established?
- (c) If the answer to the second question is in the affirmative, whether it is prejudicial to the public interest?
- (d) Whether the applicant is entitled to any compensation?

6. Parties adduced their evidence by filing their respective affidavits. They were subjected to cross examination. Additional evidence was let in at the instance of COMPAT which formulated the following questions for consideration:-

- (a) Whether the respondents have indulged in unfair trade practice as defined under Section 36-A of the Act?
- (b) Whether the cancellation of allotment of Flat No. B-301 in Siddharth Shila Apartments is legal and justified?
- (c) Whether a direction can be issued to the respondents to deliver possession of Flat No. B-301 in Siddharth Shila Apartments, Vaishali Township, Ghaziabad?
- (d) Whether the legal representatives of the complainant are entitled to compensation?

7. Having regard for the evidence produced during enquiry, COMPAT arrived at the conclusion that the respondents had issued brochure containing a promise to complete the project within 36 months. The COMPAT found that the respondents had made a false representation to the general public including Smt. Gursharan Kaur about the time within which the project was to be completed i.e. three years, but did not complete the construction for more than one decade. Thus, the COMPAT held the respondents guilty of unfair trade practice in terms of provisions of Section 36-A (1) (i), (ii) & (ix) of the MRTP Act. It further held that the complainant

was justified in not paying further installments of price and the respondents committed grave illegality by cancelling the allotment. With regard to prayer for a direction to respondents to deliver possession of the booked flat or allotment of an alternative flat/apartment, the COMPAT, noticing the law laid down by the Hon'ble Apex Court in '*Ghaziabad Development Authority Vs. Ved Prakash Agarwal*' decided on 14<sup>th</sup> May, 2008 held that the MRTP Commission and its successor COMPAT could not assume the powers of Civil Court to grant relief in the nature of specific performance. Therefore, it declined to issue a direction for delivery of possession of booked flat to the Complainant. Taking note of the fact that the Complainant and her legal representatives were subjected to harassment for a period of more than 25 years, the COMPAT directed the respondents to pay compound interest @ 15% per annum to the legal representatives of the Complainant with interest calculated on each installment from the date of its deposit till 30<sup>th</sup> April, 2005 i.e. the date on which the allotment was cancelled. Besides the respondents were directed to pay Rs.4,53,750/- to the legal representatives of the Complainant.

8. The order, pronounced on 3<sup>rd</sup> August, 2015 by COMPAT was assailed by legal representative of Complainant as also by respondents through the medium of separate appeals before the Hon'ble Apex Court. The Hon'ble Apex Court, in terms of its judgment rendered on 18<sup>th</sup> July, 2017, while upholding the award of compensation to legal representatives of



Complainant in terms of the formula adopted by the COMPAT observed as under:-

*“5. X .....X.....X Merely because a liquidated amount is not stipulated or determined by the Tribunal, it cannot be said that it is not the compensation. Once the interest, as ordered by the Tribunal, is calculated that will be the amount of compensation referred to under section 12-B of the Act.”*

The Hon'ble Apex Court, while noticing the arguments canvassed on behalf of Respondent Builder that when it had taken the Pay Order from the Citibank on 30<sup>th</sup> April, 2005, the amount of Rs.4,53,750/- covered by the Pay Order had been deducted from its current account but same had not been received by the Payee (Complainant) and the account holder cancelled the Pay Order and requested for re-credit of the amount and Citibank re-credited the amount to the account only on 22<sup>nd</sup> June, 2016 and also the argument advanced by Citibank that the money deducted from current account of the builder on 30<sup>th</sup> April, 2005, though not paid to the payee, was not enjoyed by the Bank as the Pay Order could have been presented any moment observed that both the issues have not been gone into by COMPAT apparently because these aspects were not addressed and Citibank was not a party before the Tribunal. The Hon'ble Apex Court disposed of the appeals by remitting the matter to COMPAT with following directions:-

- (i) The Citibank N.A., represented by its Manager, Jeevan Bharti Building, 124, Connaught Circus, New Delhi will stand impleaded as additional respondent in the complaint before the Competition Appellate Tribunal, New Delhi.
- (ii) The builder shall pay the compensation worked @15% compound interest up to 30.04.2005.
- (iii) Whether there should be any compensation and if so, what should be the amount payable after 30.4.2005 and whether the Citibank is liable to pay any interest to the account holder by the Tribunal.

9. Pursuant to orders of Hon'ble Apex Court passed in appeal, the legal representative of Complainant impleaded Citibank as 3<sup>rd</sup> Respondent. Respondents were allowed to file their respective affidavits in regard to payment of interest, if any, payable to the Complainant from 1<sup>st</sup> May, 2005 onwards. It was specifically directed that in the event of a dispute inter-se Respondents in respect of interest liability, they shall be at liberty to file their respective affidavits in support of their respective versions. Appellant was also directed to file an additional affidavit giving details of further development after 30<sup>th</sup> April, 2005 in regard to liability of interest.

10. Pleadings have been completed. Heard learned counsel for the parties and perused the record.

11. In their reply affidavit Respondent Nos. 1 and 2, while reiterating their stand taken during inquiry, pleaded that the direction no. II given by the Hon'ble Supreme Court in terms of judgment dated 18<sup>th</sup> July, 2017 directing

the builder to pay compensation worked @ 15% compound interest upto 30<sup>th</sup> April, 2005 has been complied with. It is pleaded that the respondent builder paid an amount of Rs.9,35,440.58/- vide DD No. 138207 dated 16<sup>th</sup> April, 2016 to the Complainant on account of 15% simple interest in terms of order dated 08<sup>th</sup> April, 2016 passed by the Hon'ble Apex Court during the pendency of the appeal. Respondent No. 2 by letter dated 7<sup>th</sup> May, 2016 enclosed a Managers Cheque No. 021566 for Rs.4,53,750/- drawn on HDFC Bank towards the payment of Principal Amount paid in lieu of cancellation of Managers Cheque given to Complainant by letter dated 30<sup>th</sup> April, 2005 in terms of order dated 29<sup>th</sup> April, 2016 passed by the Hon'ble Apex Court and thereafter order dated 18<sup>th</sup> May, 2016 passed by COMPAT returning Demand Draft No.885894 dated 30<sup>th</sup> April, 2005 lying in the registry of COMPAT. It is further pleaded that the compound interest @ 15% per annum from the dates of deposits till 30<sup>th</sup> April, 2005 amounting to Rs.17,97,940.83/- calculated in terms of judgment of Hon'ble Apex Court was paid vide Managers Cheque No. 112079 dated 17<sup>th</sup> October, 2017 issued by HDFC Bank in favour of 'Karanvir Singh Monga' (legal heir of Complainant). It is further pleaded that the Complainant had only made a prayer of Rs.25 lakhs in lump sum as compensation and had not prayed for award of interest. Moreover Complainant have received a sum of Rs.27,33,381.41/- as compound interest @15% calculated on the principal amount of Rs.4,53,750/-. It is further pleaded that the Complainant had deposited the Pay Order furnished by the Respondent before the erstwhile

MRTP Commission. The Pay Order from Citibank NA for Rs.4,53,750/- was deducted from the current account of Respondent No.2 (Builder) and had been filed in the Registry by the Complainant as it had not been encashed by the Complainant under protest. Same was not encashed from 2005 to 2016 and no interest earned thereon. The Complainant had returned the said Pay Order for Rs.4,53,750/- alongwith notice dated 26<sup>th</sup> September, 2005. Respondent replied to the said notice. The Managers Cheque for Rs.4,53,750/- which was valid till 30<sup>th</sup> October, 2005 was returned to the Complainant alongwith the reply with request to encash the same. The Cheque for Rs.1 Lakh sent alongwith the legal notice was also returned to the Complainant. The Managers Cheque in question was received by the Complainant and continued to be in her possession. The Pay Order No.885894 dated 30<sup>th</sup> April, 2005 for Rs.4,53,750/- was returned to Respondent in terms of order dated 18<sup>th</sup> May, 2016 passed by the Tribunal for revalidation in the name of legal representative of the Complainant.

12. Citibank, Respondent No. 3, in its reply affidavit stated that Respondent No. 1 or the Payee were not entitled to interest at the fixed deposit rates from 2005 to 2016 from the Respondent No. 3 in respect of Pay Order bearing No. 885894 for the reason that the account no.0422645225 was a Current Account operated by Respondent No.2 which was opened on 13<sup>th</sup> September, 2000 and closed on 20<sup>th</sup> March, 2017. The Pay Order No. 885894 dated 30<sup>th</sup> April, 2005 favouring 'Manjeet Kaur Monga' for an amount of Rs.4,53,750/- was issued from the said account on request of

Respondent No.1 who was authorized signatory of Respondent No.2. It was valid for six months from the date of issue. Since the Pay Order was not encashed within the validity period, it became stale and the funds moved into the 'Unclaimed Sundry Account' of the Bank. On 30<sup>th</sup> May, 2016, Respondent No.2 approached Jeevan Bharti Branch of the Respondent No. 3 (Bank) with letter dated 26<sup>th</sup> May, 2016 alongwith the original Pay Order and statement reflecting debit of Pay Order requesting cancellation and credit of proceeds of the instrument in their account. Funds were credited back to the account of Respondent No.2 on 16<sup>th</sup> June, 2016 and a fresh Pay Order bearing no. 262910 dated 16<sup>th</sup> June, 2016 was issued favouring Respondent No.2. To a letter emanating from Respondent No.1 the Bank responded on 30<sup>th</sup> March, 2017 mentioning that no interest was payable for the duration the Draft was not encashed. It is stated that as per RBI Circular of May, 2014 amount of Rs.4,53,750/- was transferred to Depositor Education and Awareness Fund (DEAF) on account of remaining unclaimed for a period of more than 10 years. Moreover, the account maintained by Respondent No. 1 with the Bank was a Current Account from which the Pay Order drawn was not liable to garner interest. Clarifying its stand the Bank further stated that a Demand Draft/ Pay Order is in the nature of a pre-paid negotiable instrument by which the Drawee Bank undertakes to make payment in full when the instrument is presented by the Payee for payment. It is further stated that Rs.4,53,750/- was claimed as refund by Respondent No. 1 on 26<sup>th</sup> May, 2016 when the Demand Draft No. 885894 dated 30<sup>th</sup>

April, 2015 was cancelled on specific request of Respondent No.1 dated 26<sup>th</sup> May, 2016, thus the Drawee or the Account Holder were not entitled to interest at the fixed deposit rates or any interest whatsoever for the period 2005 to 2016.

13. In his affidavit Mr. Karanvir Singh Monga, legal representative of Complainant reiterated the stand earlier taken by Complainant and further stated that the Complainant has not benefited from the Pay Order at any point of time. Since, the Pay Order was to expire on 30<sup>th</sup> October, 2005, Complainant could not be held accountable for the Respondents failure to request the Respondent Bank to recredit the amount back to its account. It is further stated that the Builder approached the Respondent No.3 to cancel the Pay Order and recredit money back to its account only after filing SLP before the Hon'ble Apex Court. The money has been credited back to Respondents Company Account on 22<sup>nd</sup> June, 2016. Thus, it is for Respondents 1 and 2 to seek remedy against the Bank and the Complainant cannot be made to suffer due to inter-se liability dispute between the two. The Complainant's legal representative has prayed for award of interest/ compensation @ 15% per annum w.e.f. 1<sup>st</sup> May, 2005 till realisation of the accrued amount.

In his rejoinder affidavit Mr. Karanvir Singh Monga, legal representative of Complainant stated that since the payment was made as late as in the year 2016 and 2017 under Court directions, Respondents have to pay the interest payable for the pendent-lite and future period and the

Complainant has nothing to do with the dispute between the Builder and the Bank on this score. It is stated that it is only on the insistence of the Builder that the Citibank was made party in the proceedings and the Bank has clarified that it was the responsibility of the Builder to inform the Bank regarding non-encashment of the Pay Order. It is stated that the Builder is liable to pay pendent-lite and further interest/ compensation to the Complainant as it had illegally cancelled the allotment of flat to the Complainant and sold the same to a third party before such cancellation. Thus, the Complainant had nothing to do with the dispute in regard to payment of interest inter-se the Builder and the Bank.

14. Based on the pleadings of the parties, the evidence brought on record during inquiry in the context of directions issued by Hon'ble Apex Court in terms of its judgment dated 18<sup>th</sup> July, 2017 and the arguments advanced by the parties, we proceed to return finding on the following issue:-

‘Whether there should be any compensation and if so, what should be the amount payable after 30<sup>th</sup> April, 2005 and whether the Citibank is liable to pay any interest to the account holder.’

15. After having fathomed through the depths of the material on record and in view of the findings recorded by COMPAT in terms of order dated 3<sup>rd</sup> August, 2015, we find that the direction of the Hon'ble Apex Court in terms of its judgment dated 18<sup>th</sup> July, 2017 disposing of the appeals filed by both the parties has somewhat been misconstrued by the legal representatives of the deceased Complainant in so far as direction in regard

to compensation is concerned. In this regard, it would be appropriate to refer to the finding recorded by COMPAT on the issue of compensation admissible to the legal representatives of the deceased Complainant on account of unfair trade practice indulged in by the Respondent Company and the Builder and the harassment suffered by the Complainant and her legal representatives. COMPAT while returning findings on issues no. 1 and 2 found that the Respondents had made a false representation to the general public including Smt. Gursharan Kaur about the time within which the project was to be completed i.e. three years but did not complete the construction for more than one decade. COMPAT, accordingly, held the Respondents guilty of unfair trade practice as defined under Section 36A(i), (ii) & (ix) of the MRTP Act. COMPAT further held that the Complainant Dr. Manjeet Kaur Monga, having deposited three installments besides three installments initially deposited by Smt. Gursharan Kaur (total Rs.4,53,750) did not deposit further installments because the Respondents did not complete the construction within the stipulated time. COMPAT was of the view that the Complainant was justified in not paying further installments of price and the Respondents committed grave illegality by cancelling the allotment. In regard to prayer for direction to respondents to deliver possession of Flat No. B-301 in Siddharth Shila Apartments, Vaishali Township Ghaziabad, COMPAT, following the law laid down by Hon'ble Apex Court in '*Ved Prakash Aggarwal's*' case held that the Tribunal was not competent to issue direction to the Respondents to deliver physical



possession of the flat but there was ample justification for awarding compensation by invoking Section 12B of the Act and even otherwise because the Complainant and her legal representatives have been subjected to harassment for the period of more than 25 years. It observed that between August, 1989 and October, 1993 Smt. Gursharan Kaur and the Complainant deposited a total sum of Rs.4,53,750/- in the form of installments and the Respondents not only failed to complete the project but also failed to return the installments deposited by them. The amount was returned only alongwith the cancellation letter and the Complainant had returned the Pay Order with the legal notice sent on 7<sup>th</sup> September, 2005. With regard to quantification of compensation COMPAT observed that though Section 12B empowered the Tribunal to award compensation but no criteria had been laid down for exercise of that power. Having regard for the fact that the construction of the flat was delayed by more than a decade and the amount of installments deposited by Smt. Gursharan Kaur and the Complainant totaling Rs.4,53,750/- was retained by the Respondents for a period between 12 to 15 years, COMPAT directed the Respondents to pay compound interest @ 15% per annum to the legal representatives of the Complainant. The interest was directed to be calculated on each installment from the date of deposit till 30<sup>th</sup> April, 2005 i.e. the date on which the allotment was cancelled. This was besides the deposited amount of Rs.4,53,750/- that was directed to be paid alongwith the compound interest as aforesaid to the legal representatives of the Complainant within three

months from the date of the order. While disposing of the appeals filed by both sides, the Hon'ble Apex Court dealt with the issue of compensation determinable under Section 12B of the Act, as follows:-

*“5. We do not think that there needs to be any elaborate consideration of the meaning of the word “compensation” in terms of the amount referred to under the Section. The amount referred to under the Section is the amount @ 15% compound interest on the amount already deposited, as ordered by the Tribunal. Merely, because a liquidated amount is not stipulated or determined by the Tribunal, it cannot be said that it is not the compensation. Once the interest, as ordered by the Tribunal, is calculated that will be the amount of compensation referred to under Section 12B of the Act.”*

In view of the aforesaid, it can be stated without any fear of contradiction that the compensation worked @ 15% compound interest upto 30<sup>th</sup> April, 2005, as awarded by COMPAT and confirmed by the Hon'ble Apex Court in appeal holding the same as compensation admissible within the purview of Section 12B of the Act, notwithstanding the fact that the amount so calculated was not a liquidated amount either stipulated in the Act or determined by the Tribunal, would be the compensation to which the legal representatives of the Complainant have been found entitled to, besides the refund of principal amount of Rs.4,53,750/- paid by the deceased Smt.

Gursharan Kaur and the Complainant as installments of price amount of the allotted flat. This is the true import of the order passed by the Hon'ble Apex Court in the context of observations made in Para 5 of its judgment quoted hereinabove. Any other interpretation on the issue of compensation would run counter to the findings recorded by COMPAT and affirmed by Hon'ble Apex Court in appeal. We accordingly, hold that the issue of compensation admissible to the legal representatives of Complainant within the ambit and scope of Section 12B of the Act stands settled in so far as it relates to period ending 30<sup>th</sup> April, 2005.

16. Now, coming to grips with the issue relating to payment of compensation to legal representatives of Complainant beyond 30<sup>th</sup> April, 2005 i.e. till refund/ payment of the amount of Rs.4,53,750/- deposited in the form of installments by Smt. Gursharan Kaur and the Complainant, be it seen that award of compensation to the Complainant is the only mode of redressal for harm/ hardship suffered by a victim of unfair trade practice and where such compensation is quantified by awarding compound interest on the principal amount deposited by the Complainant and legal representatives of Complainant, there would be no justification in limiting the award of interest to a particular event when by that date the principal amount together with interest accrued thereon is not paid to the Complainant. To elaborate it further, in the context of the instant case, it comes to fore that the COMPAT, while directing the Respondents to pay compound interest @ 15% per annum to the legal representatives of the

Complainant directed such interest to be calculated on each installment from the date of deposit till 30<sup>th</sup> April, 2005 i.e. the date on which the allotment was cancelled. Respondents were directed to pay the deposited installments amounting to Rs.4,53,750/- and compound interest to the legal representatives of the Complainant within a period of three months from the date of the order. It is manifestly clear that accrual of the compound interest was limited to 30<sup>th</sup> April, 2005 on account of an event i.e. the date on which the allotment was cancelled. Justification for this limit appears to be on the false assumption that the benefit in the form of amount deposited by Smt. Gursharan Kaur and the Complainant to the tune of Rs.4,53,750/- in installments as part price of the flat in terms of the agreed schedule had been refunded to the legal representatives of the Complainant. We say so as the Respondents in their affidavit have taken the stand that when Respondent No 2, by letter dated 30<sup>th</sup> April, 2005 cancelled the allotment of the flat, Pay Order No. 885894 dated 30<sup>th</sup> April, 2005 for Rs.4,53,750/- drawn on Citibank towards full refund of payments of installments made against allotment of the said flat was enclosed with the aforesaid letter. However, the Complainant, by notice dated 7<sup>th</sup> September, 2005 called upon the respondents to allot another flat in the project besides seeking compensation of Rs.25 lakhs and returned the Pay Order sent by the Respondents. It further emerges from record that the Complainant had also sent a cheque of Rs.1 lakh to the Respondents indicating its willingness to continue with the contract. As per stand taken by Respondents in their

affidavit, the Respondents returned the cheque for Rs.4,53,750/- alongwith cheque for Rs.1 lakh sent by the Complainant. From the stand taken by the legal representative of the Complainant it is abundantly clear that the said Pay Order of Rs.4,53,750/- was never encashed by the Drawee which was valid only till 30<sup>th</sup> October, 2005. Meanwhile the Complainant filed the complaint under MRTP Act alleging unfair trade practice against the Respondents. Admittedly, the Pay Order dated 30<sup>th</sup> April, 2005 favouring the Complainant with validity of six months was not encashed within the validity period. From the affidavit filed by the newly impleaded Respondent No. 3-Citibank it emerges that since the Pay Order in question had become stale, the funds moved into the 'unclaimed sundry account' of the Bank with no interest admissible thereon as per RBI directions. It further emerges from the affidavit of Respondent No. 3 that the aforesaid Pay Order was cancelled on specific request of Respondent No. 1 dated 26<sup>th</sup> May, 2016 and the funds were credited back to the account of Respondent No. 2 company on 16<sup>th</sup> June, 2016. Respondents No. 1 & 2 have stated in their affidavit sworn on 15<sup>th</sup> December, 2017 that the Complainant had deposited the Pay Order furnished by the Respondent before the erstwhile MRTP Commission where the complaint was filed. The Pay Order from Citibank for Rs.4,53,750/- was deducted from the current account of Respondent No.2 (Builder) and had been filed in the Registry by the Complainant as she had not encashed the same under protest. This factual position is also reflected in the judgment of the Hon'ble Apex Court dated 18<sup>th</sup> July, 2017.

Respondent No. 3, Citibank reccredited the amount to the account of Respondent Company only on 16<sup>th</sup> June, 2016. This appears to have been done in compliance to order dated 18<sup>th</sup> May, 2016 passed by COMPAT on the application filed by Respondents No. 1 and 2 for release of the Pay Order dated 30<sup>th</sup> April, 2005 for revalidation. It is manifestly clear that the legal representatives of the Complainant did not get the refund of Rs.4,53,750/- in terms of order dated 3<sup>rd</sup> August, 2015 passed by COMPAT as the funds were credited back to the account of Respondent No. 2 Company on 16<sup>th</sup> June, 2016 and a fresh Pay Order bearing No.262910 dated 16<sup>th</sup> June, 2016 favouring 'Suneja Towers Pvt. Ltd.' was issued by Respondent No. 3 on the request of Respondents No. 1 & 2. From affidavit sworn by Respondent No.1 on 18<sup>th</sup> October, 2017, it emerges that the Respondents No. 1 and 2 refunded the amount of Rs.4,53,750/- in favour of the legal representative of the deceased Complainant by enclosing Managers Cheque No. 021566 for the same amount with their letter dated 7<sup>th</sup> May, 2016 in lieu of cancellation of the Managers Cheque given to Complainant in the year 2005. This is stated to have been done in compliance to the orders of Hon'ble Apex Court dated 8<sup>th</sup> April, 2016 and 29<sup>th</sup> April, 2016. The letter alongwith the Managers Cheque in question forms Annexure 'C' to the affidavit. It is abundantly clear that the legal representatives of the deceased Complainant did not get the refund of Rs.4,53,750/- in terms of order of COMPAT till 7<sup>th</sup> May, 2016. This factual position is not refuted by the legal representatives of the deceased Complainant who did not respond to assertion of facts by

Respondents No. 1 and 2 in their affidavit which is supported by documentary evidence. It is accordingly found that the direction of COMPAT in terms of order dated 3<sup>rd</sup> August, 2015 in regard to payment of Principal amount of Rs.4,53,750/- stood not complied with till 7<sup>th</sup> May, 2016. In view of the same, the legal representatives of the Complainant would be entitled to further compensation in the form of compound interest @ 15% per annum on the principal amount of Rs.4,53,750/- w.e.f. 1<sup>st</sup> May, 2005 till 7<sup>th</sup> May, 2016 further entitled to pendentelite and future interest till realization of the accumulated arrears from Respondents No. 1 and 2.

Next issue arising for consideration is whether the Citibank is liable to pay any interest to the account holder. Determination of this issue does not present much difficulty as the stand taken by Respondent No.3 – Citibank in their reply affidavit largely remains unrebutted. It emerges from the affidavit filed by Citibank that the pay order bearing no.885894 dated 30<sup>th</sup> April, 2005 favouring Mrs. Manjeet Kaur Monga for an amount of Rs.4,53,750/- was issued from Current Account No. 0422645225 of Respondent No.2 opened on 13<sup>th</sup> September, 2000 and closed on 20<sup>th</sup> March, 2017 at the request of Respondent No.1, who was authorized signatory of Respondent No.2. The pay order was valid for six months from the date of issue. It was on 30<sup>th</sup> May, 2016 that Respondent No. 2 approached Jeevan Bharti Branch of Citibank with letter dated 26<sup>th</sup> May, 2016 alongwith original pay order and account statement requesting cancellation of the instrument and credit of its proceeds into their account.

The funds were credited back to the account of Respondent No. 2 Company on 16<sup>th</sup> June, 2016 and a fresh pay order bearing no.262910 dated 16<sup>th</sup> June, 2016 favouring Respondent No.2 was issued. On 22<sup>nd</sup> February, 2017, Respondent No. 1 approached Citibank through a letter seeking information on interest component from 30<sup>th</sup> April, 2005 to reissuance date i.e. 16<sup>th</sup> June, 2016. Respondent No.3 – Citibank responded to the same on 30<sup>th</sup> March, 2017 stating that no interest was payable when the draft was not encashed. Referring to RBI Circular of May, 2015 Citibank stated that all customer funds remaining unclaimed for a period more than ten years were required to be transferred to 'Depositor Education and Awareness Fund' and since the account maintained by Respondent no. 1 with Citibank was current account from which the pay order was drawn, same was not liable to garner interest. Further elucidating the rule position, the Citibank stated that a pay order is in the nature of a pre-paid negotiable instrument by which the Drawee Bank undertakes to make payment in full when the instrument is presented by the Payee for payment. The refund under the pay order was claimed by Respondent No. 1 on 26<sup>th</sup> May, 2016 and no interest was payable thereon. The demand draft in question was cancelled on the specific request of Respondent No.1 dated 26<sup>th</sup> May, 2016. It is therefore manifestly clear that since the pay order in question was neither encashed by the Drawee nor was the same got revalidated by Respondent no. 1 after the same was returned by the Complainant in the first instance and upon its being resent to her by Respondent No.1 same was filed with



the Complaint as an annexure, Citibank, which had transferred the amount of the pay order to 'Unclaimed Sundry Account' could not utilize the funds for garnering interest during the aforesaid period. While it is not in controversy that the amount of Rs.4,53,750/- was deducted from the current account of Respondent No.2 when pay order was issued on 30<sup>th</sup> April, 2005 and the same remained unutilized on account of non-encashment on the part of Complainant (Drawee), it is equally true that the amount did not enure to the benefit of Citibank for garnering interest. The rule position under the RBI Circular relied upon by the Citibank mandating transfer of all customer funds remaining unclaimed for a period of more than ten years to 'Depositor Education and Awareness Fund' can be interpreted on no hypothesis other than the one that Citibank did not derive any pecuniary advantage from such funds. Respondents 1 and 2 failed to demonstrate that the Citibank had at any point of time been informed of non-encashment or lapsing of the pay order. Seeking revalidation was solely the prerogative of Respondent No. 2 from whose account pay order had been issued. It would therefore be a travesty of justice to burden the Citibank with the liability of interest on the amount of Rs.4,53,750/- (amount of pay order in question) when neither any statutory or contractual provision entitling the account holder Respondent No.2 warranting the same is shown to exist nor any act of malfeasance, misfeasance or nonfeasance is attributed to it. The huge delay in seeking cancellation of pay order in question and refund of funds thereunder is solely attributable to

respondents 1 and 2 and Citibank cannot be made accountable for no fault on its part. In the backdrop of this factual and legal position liability of Citibank for paying interest is not made out. The issue is accordingly answered in negative and it is held that the Citibank is not liable to pay interest to the account holder company for the aforesaid period.

The matters are accordingly disposed of. It is provided that the amount of compensation calculated in terms of this judgment in the manner aforestated together with accumulated arrears shall be payable within one month of pronouncement of this judgment failing which the legal representatives of deceased Complainant shall be at liberty to seek execution. Parties are left to bear their own costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member(Judicial)

**NEW DELHI**

**19<sup>th</sup> December, 2018**

AM