

DR. MANJEET KAUR MONGA (DEAD) THR. HER
LEGAL HEIRS KARAN VIR SINGH MONGA

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v.

K. L. SUNEJA & ORS.

(Civil Appeal Nos. 5032-5033 of 2016)

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JULY 18, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Compensation:

Complaint against builder – Before Competition Appellate Tribunal alleging that cancellation of house allotment by the builder was arbitrary, illegal and capricious – Seeking possession of the flat – Tribunal awarded compensation by invoking s.12-B of Monopolies and Restrictive Trade Practices Act directing to pay the entire amount deposited by the complaint (Rs.4,53,850/-) with compound interest @ 15% per annum from the date of deposit till the date of cancellation i.e. 30.4.2005 – On appeal, held: The amount @ 15% compound interest on the amount deposited was the compensation amount awarded u/s. 12B – The pay order (dated 30.4.2005) of the amount which the builder sent to the complainant with the cancellation order (which was not received by the complainant) was re-credited to the account of the builder only on 22.6.2016 – Matter remitted to the Tribunal with the direction that the Bank would be impleaded as party; that builder shall pay compensation @ 15% compound interest; and that the Tribunal to determine whether compensation was required to be paid after 30.4.2005 and that whether the Bank was liable to pay any interest to the builder – Monopolies and Restrictive Trade Practices Act, 1969 – s.12B.

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Disposing of the appeals, the Court

HELD: 1. The amount referred to as compensation under Section 12B of Monopolies and Restrictive Trade Practices Act, 1969, 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

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A 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. [Para 5] [459-D]

B 2.1 When the builder company had taken the pay order from the Citibank on 30.04.2005, the amount of Rs.4,53,750/- covered by the pay order had actually been deducted from their current account. But at the same time, the amount had not been paid/received by the payee. The account holder cancelled the pay order and requested for re-credit of the amount and, accordingly, the Citibank has re-credited the amount to the account only on 22.06.2016. Plea of the account holder company (builder) was that for the period the money was with the Bank, the account holder is entitled to interest and that can be the compensation if at all that can be paid to the appellant for the period after the cancellation of the allotment. [Para 6] [459-F-G]

D 2.2 In terms of the principles of restitution under Section 144 C.P.C. and on the general principle of restitution, the builder cannot be put to unmerited injustice and the appellant should not take undue advantage. [Para 6] [459-H, 460-A]

E *Citibank N.A. v. Hiten P. Dalal and Others* (2016) 1 SCC 411 : [2015] 9 SCR 583 – referred to.

F 2.3 The plea of Citibank is that the money from the current account of the builder has been deducted on 30.04.2005 and it has not been paid to the payee. But, at the same time, it cannot be said that the money was enjoyed by the Bank, since being a pay order, at any moment the instrument is presented, the Bank was bound to honour the same and, therefore, only for the lapse on the part of either the payee or the account holder for encashing or cancelling the instrument, the Bank cannot be saddled with any interest. [Para 7] [460-B-C]

G 2.4 These aspects have not been canvassed and gone into by the Tribunal because the Citibank was not before the Tribunal. Therefore, the matters are remitted to the Competition Appellate Tribunal. [Paras 8, 10] [460-D, G-H]

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Case Law Reference

[2015] 9 SCR 583

referred to

Para 6

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5032-5033 of 2016.

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From the Judgment and Order dated 03.08.2015 of the Competition Appellate Tribunal at New Delhi in Unfair Trade Practice Enquiry No.90 of 2005 and Compensation Application No. 39 of 2009

WITH

C. A. Nos. 9225-9226 and 9223-9224 of 2017.

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Debesh Panda, Milind Kumar, Ms. Suruchi Suri, Avinash Kumar, Nikilesh Ramachandran, Mayank Wadhwa, Advs. for the Appellant.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted in SLP(C) Nos.10484-10485/2016 & 10481-10482/2016.

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2. The appellant in Civil Appeal Nos.5032-5033/2016, who is the legal representative of the original complainant, is before us aggrieved by the order dated 3.8.2015 passed by the Competition Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Unfair Practice Enquiry No.40/2005 and Compensation Application No.39/2009 Paragraph nos.37 and 42 to 44 of the impugned order read as follows:-

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“37. The cancellation of allotment made in favour of the complainant deserves to be declared as wholly arbitrary, illegal and capricious. It is not in dispute that Smt. Gursharan Kaur had deposited three installments including the booking amount. The complainant, Dr. (Mrs.) Manjeet Kaur Monga deposited three other installments (total Rs. 4,53,850/-). She did not deposit further installments because the respondents did not complete the construction within the stipulated time. For the first time a vague statement about the construction was made in letter dated 26.12.2001, which was issued after 12 years of the booking. Even thereafter the respondents did not disclose the stage-wise progress in the construction work and, as mentioned above, they deliberately misconstrued the complainant's protest dated

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A 22.05.2002 as her disinclination to take the flat. Between 2002
and 2005 i.e. the date on which the cancellation letter was
issued, the respondents neither entered into any correspondence
with the complainant nor apprised her about the progress made
in the construction. Therefore, it must be held that the
B complainant was justified in not paying further installments of
price and the respondents committed grave illegality by
cancelling the allotment.

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xxx xxx xxx

C 42. In my view, even though the Tribunal cannot, in view of the
law laid down in Ved Prakash Aggarwal's case, issue direction
to the respondents to deliver physical possession of the flat,
there is ample justification for awarding compensation by
invoking Section 12-B of the Act and even otherwise, because
D the complainant and her legal representatives have been
subjected to harassment for the period of more than 25 years.
If the building had been completed within three years as
promised by the respondents, the complainant may have got
possession thereof and utilized the same. She could not do so
during her lifetime and her legal representatives have been
E compelled to pursue this litigation. It is an admitted position that
between August, 1989 and October, 1993, Smt. Gursharan Kaur
and the complainant deposited a total sum of Rs.4,53,850/- in
the form of installments. The respondents not only failed to
complete the project within the stipulated time but also failed to
F return the installments deposited by Smt. Gursharan Kaur and
the complainant. The amount was returned only along with the
cancellation letter and, as mentioned above, the complainant
had returned the pay order with the legal notice sent on
07.09.2005.

G 43. Though Section 12-B empowers the Tribunal to award
compensation but no criteria has been laid down by the
Legislature for exercise of that power. However, keeping in
view the fact that the construction of the flat was delayed by
more than one decade and the amount of installments deposited
by Smt. Gursharan Kaur and the complainant totalling

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Rs.4,53,850/- was retained by the respondents for a period ranging from 15 years to more than 12 years, I feel that ends of justice would be served by directing the respondents to pay compound interest @ 15% per annum to the legal representatives of the complainant. A

44. Accordingly, UTPE 90/2005 and C.A. 39/2009 are disposed of in the following terms : B

(i) It is declared that the respondents have acted in violation of Section 36-A(1)(i), (ii) and (ix) of the Act and they are guilty of unfair trade practice,

(ii) The complainant's prayer for directing the respondents to deliver possession of Flat B-301 in Siddharth Shila Apartments is rejected, C

(iii) The respondents are directed to pay compound interest @ 15% per annum to the legal representatives of the complainant. The interest shall be calculated on each instalment paid by Smt. Gursharan Kaur and the complainant from the date of deposit till 30.04.2005 i.e. the date on which the allotment was cancelled, and D

(iv) The respondents shall pay Rs.4,53,850/- and compound interest to the legal representatives of the complainant in terms of (iii) above within a period of three months from today. If the needful is not done, then the legal representatives of the complainant shall be entitled to file appropriate application for execution of this order." E

3. Since the facts have clearly emerged from what we have extracted above, we need not to go into the factual matrix. The contention of the appellant is that since the allotment has been cancelled, the appellant should be entitled to compound interest @ 15% from the original dates of payment from 1989 till the date of payment and there is no justification in limiting the interest to 30.04.2005. F

4. It is the contention of the respondents, who have filed separate appeals arising from SLP(C) Nos.10484-10485/2016 and SLP(C) Nos.10481-10482/2016, that the company and the director have no liability to pay the compound interest even assuming that the appellant in Civil Appeal Nos.5032-5033/2016 is entitled to any compensation. It can be G

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A only the amount determined under Section 12B of The Monopolies and Restrictive Trade Practices Act, 1969 (for short, 'the Act'). Section 12B reads as follows:-

B "12B. Power of the Commission to award compensation. (1)
Where, as a result of the monopolistic or restrictive, or unfair,
trade practice, carried on by any undertaking or any person,
any loss or damage is caused to the Central Government, or
any State Government or any trader or class of traders or any
consumer, such Government or, as the case may be, trader or
class of traders or consumer may, without prejudice to the right
C of such Government, trader or class of traders or consumer to
institute a suit for the recovery of any compensation for the
loss or damage so caused, make an application to the
Commission for an order for the recovery from that undertaking
or owner thereof or, as the case may be, from such person, of
such amount as the Commission may determine, as
D compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (1) is
caused to numerous persons having the same interest, one or
more of such persons may, with the permission of the
Commission, make an application, under that sub-section, for
E and on behalf of, or for the benefit of, the persons so interested,
and thereupon the provisions of rule 8 of Order I of the First
Schedule to the Code of Civil Procedure, 1908 (5 of 1908),
shall apply subject to the modification that every reference
therein to a suit or decree shall be construed as a reference to
the application before the Commission and the order of the
F Commission thereon.

(3) The Commission may, after an inquiry made into the
allegations made in the application filed under sub-section (1),
make an order directing the owner of the undertaking or other
G person to make payment, to the applicant, of the amount
determined by it as realisable from the undertaking or the owner
thereof, or, as the case may be, from the other person, as
compensation for the loss or damage caused to the applicant
by reason of any monopolistic or restrictive, or unfair trade
practice carried on by such undertaking or other person.

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(4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1), or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.”

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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.

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6. During the course of hearing of the appeals another interesting point came up for consideration. It has been brought to the notice of this Court that when the builder company, the appellant in the appeals arising out of SLP(C) Nos.10484-10485/2016, had taken the pay order from the Citibank on 30.04.2005, the amount of Rs.4,53,750/- covered by the pay order had actually been deducted from their current account. But at the same time, the amount had not been paid/received by the payee. In the instant case, the account holder cancelled the pay order and requested for re-credit of the amount and, accordingly, it is seen that the Citibank has re-credited the amount to the account only on 22.06.2016. It is the contention of the account holder company that for the period the money was with the Bank, the account holder is entitled to interest and that can be the compensation if at all that can be paid to the appellant in Civil Appeal Nos.5032-33/2016 for the period after the cancellation of the allotment. We may, of course, take note of the submission of the builder that in terms of the principles of restitution under Section 144 C.P.C. and on the general principle of restitution, the builder cannot be put to unmerited injustice and the appellant should not take the undue

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A advantage as held by this Court in *Citibank N.A. V. Hiten P. Dalal and Others*, (2016) 1 SCC 411, as canvassed by the learned counsel appearing for the builder.

7. Learned counsel appearing for Citibank, inviting our reference to the additional affidavit contended that it is a fact that the money from the current account of the builder has been deducted on 30.04.2005 and it has not been paid to the payee. But, at the same time, it cannot be said that the money was enjoyed by the Bank, since being a pay order, at any moment the instrument is presented, the Bank was bound to honour the same and, therefore, only for the lapse on the part of either the payee or the account holder for encashing or cancelling the instrument, the Bank cannot be saddled with any interest. It is also submitted by the learned counsel appearing for the Bank that they are governed by the instructions issued by the Reserve Bank of India in that regard.

8. We find from the order of the Tribunal that both the issues have not been gone into, apparently because these aspects have not been canvassed and obviously because the Citibank was not before the Tribunal.

9. To that limited extent we propose to send back the matters to the Tribunal. Therefore, these appeals are disposed of as follows:-

E 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.

F ii. The builder shall pay the compensation worked @ 15% compound interest up to 30.04.2005.

G 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.

10. To the above limited extent, we remit the matters to the Competition Appellate Tribunal, New Delhi.

H 11. It will be open to the parties to take all available contentions in respect of the issues remitted to the Tribunal.

12. With the above observations and directions, the appeals are disposed of. A

13. Pending applications, if any, shall stand disposed of.

14. There shall be no orders as to costs.

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Kalpana K.Tripathy

Appeals disposed of.