2023 INSC 391

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2892-2894 OF 2023
(ARISING OUT OF SLP (CIVIL) NOS. 8163-8165 OF 2022)

M/S SUNEJA TOWERS PRIVATE LIMITED & ANR. ….APPELLANT(S)

VERSUS

ANITA MERCHANT ….RESPONDENT(S)

JUDGMENT

DINESH MAHESHWARI, J.

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Reason:

Preliminary and brief outline

Leave granted.

2. In these appeals by special leave, the appellants have essentially questioned a part of the common judgment and order dated 31.03.2022, as passed by the National Consumer Disputes Redressal Commission, New Delhi[1] in Revision Petition Nos. 771 of 2020, 772 of 2020 and 773 of 2020, whereby the National Commission has declined to interfere in the common judgment and order dated 12.03.2020, as passed by the State Consumer Disputes Redressal Commission, Delhi[2], in Appeal Nos. 121 of 2014, 122 of 2014 and 123 of 2014.

2.1. The present set of appeals has its genesis in the three complaints filed by the complainant-respondent before the Consumer Disputes Redressal Forum-II, New Delhi[3], bearing Nos. C-252 of 2006, C-283 of 2006 and C-284 of 2006 alleging deficiency of service on the part of the present appellants for having failed to deliver the possession of three flats booked by her, even after expiry of the agreed period and despite the fact that she had admittedly made payment of 60% of the total sale consideration. The District Forum, in its order dated 20.12.2013, dismissed the complaints so filed by the present respondent on various

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[1] Hereinafter also referred to as 'the National Commission'.
[2] Hereinafter also referred to as 'the State Commission'.
[3] Hereinafter also referred to as 'the District Forum'.

grounds including that she had tried to avail of the services of the builder for commercial purposes by booking three flats and thus, did not fall within the category of “consumer”, as defined under Section 2(d) of the Consumer Protection Act, 1986[4].

2.2. In the said judgment and order dated 12.03.2020, the State Commission, however, disapproved the order so passed by the District Forum as regards the maintainability of complaints and then, particularly with reference to the decision in the case of ***Dr. Manjeet Kaur Monga v. K.L. Suneja*: (2018) 14 SCC 679**[5], wherein the award of compound interest by Competition Appellate Tribunal[6] under the Monopolies and Restrictive Trade Practices Act, 1969[7] was not interfered with by this Court, granted relief to the complainant in the manner that the appellants shall refund the amount deposited by her together with *‘compound interest at the rate of 14% from the date of deposit’*. The National Commission rejected all the contentions urged on behalf of the appellant against the order so passed by the State Commission and also found no reason to interfere with the relief granted by the State Commission in view

[4] Hereinafter also referred to as ‘the Act of 1986’.
[5] Reference to this case has occurred at multiple places hereafter; where it has been referred to as the case of ‘***Dr. Manjeet Kaur Monga***’ or the case of ‘***Dr. Monga***’.
[6] ‘COMPAT’, for short.
[7] Hereinafter also referred to as the ‘MRTP Act’.

of the decision of this Court in the case of ***Dr. Manjeet Kaur Monga*** (supra).

3. On 09.05.2022, while considering the petitions leading to these appeals at the initial stage, this Court found the question of awarding compound interest @ 14% on the refund of deposited amount requiring consideration and hence, notice was issued to this limited extent. However, this Court also took note of the fact that a sum of Rs. 1,48,52,000/- had been deposited by the appellants pursuant to an order earlier passed by the National Commission and, in the totality of circumstances, execution of the orders impugned was stayed subject to the condition of the petitioners-appellants depositing a further sum of Rs. 1 crore with the District Forum within four weeks with liberty to the respondent to withdraw the deposited amount with accrued interest. Such deposit and withdrawal were, however, made subject to the final orders of this Court. The order dated 09.05.2022 reads as under: -

> "Having heard learned senior counsel for the respective parties preliminarily and having examined the material placed on record, in our view, only the question of awarding compound interest at the rate of 14% on the refund of deposited amount is required to be considered in this matter.
>
> Issue notice to the limited extent as above.
>
> Ms. Supriya Juneja, learned counsel accepts notice on behalf of the respondent No. 1.
>
> Counter affidavit may be filed within three weeks.
>
> The petitioners shall have one week thereafter to file rejoinder affidavit, if so chosen.

During the course of submissions, we have been informed that pursuant to the order dated 11.11.2020, as passed by the National Consumer Disputes Redressal Commission, the petitioners had deposited an amount of Rs.1,48,52,000/- with the President, District Consumer Disputes Redressal Forum-II, New Delhi on 25.11.2020.

Learned senior counsel appearing for the petitioners submits that as per his instructions, the said amount has been invested in a fixed deposit.

Having regard to the circumstances of the case, it is considered appropriate and hence provided in the interim that until further orders of this Court, execution of the orders impugned shall remain stayed, subject to the condition that the petitioners shall deposit further an amount of Rs. 1 crore with the said District Consumer Disputes Redressal Forum within four weeks from today.

It shall be permissible for the respondent herein to withdraw the entire deposited amount, including the earlier deposited amount of Rs.1,48,52,000/- together with accrued interest.

This deposit by the petitioners and withdrawal by the respondent shall remain subject to the final order to be passed in these petitions.

List these petitions in the second week of July, 2022."

4. After completion of pleadings, and in view of a short point involved, we have heard learned counsel for the parties finally at this stage itself.

Relevant factual and background aspects

5. As noticed, the only question involved in these appeals is about the legality and validity of the directions by the State Commission to the appellants to refund the deposited amount to the respondent with compound interest. The relevant factual and background aspects, to the extent relevant for the short question involved in the matter could be noticed as follows:

5.1. The appellant No. 1 is said to have launched a residential project namely Siddharth Shila Apartments at Plot No. 24, Vaishali, Ghaziabad, Uttar Pradesh. The appellant No. 2, K.L. Suneja is said to be the Director of the appellant No. 1. On 01.08.1989, the respondent, a Non-Resident Indian, applied for allotment of three flats in the said project and pursuant thereto, the appellant No. 1 issued allotment letter in her favour, purportedly allotting three residential flats bearing Nos. C-601, C-602 and C-603 admeasuring 1375 sq. ft. each (including common areas) for a consideration of Rs. 7,37,000/-, Rs, 7,35,625/- and Rs. 7,35,625/- respectively. The entire consideration was payable by the respondent in 12 instalments. It has been the case of the appellants that the respondent made payment up to 6th instalment but, defaulted thereafter and did not make remaining payment despite numerous reminders.

5.2. On 15.10.2005, the respondent issued a notice to the appellants, stating, *inter alia*, that even after 16 years, the appellants had kept the allottees waiting despite having received more than 60% of the total cost of the respective flats. It was also stated that she could make further payment towards the remaining instalments but was having legal right to know as to when the construction would be completed and the possession would be handed over; and without disclosing such essential facts, retaining the deposited money amounted to deficiency in service in terms of Section 2 of the Act of 1986. The respondent called upon the

appellants to furnish within 15 days a written undertaking supported by a progress certificate from the architect concerned as to when the said flats would be completed or else, she would be approaching the proper forum under the relevant provisions of law against them. The relevant contents of this notice read as under: -

> "5) That it is further needless to mention here that an allottee like my said clientess, who has already invested more than 60% of the total cost of the respective flats, certainly can make further payment towards the remaining instalments but at least the allottees at large are having legal rights to know as to when the said flats will be completed and the possession be handed over to them, and without disclosing the same from your side, and keeping the money collected amounts to deficiency in service as per Section 2 of the Consumer Protection Act for which my said clientess shall have right to invoke the jurisdiction of the competent forum.
>
> 6) That without prejudice to the above, my client is ready to make the payment of balance instalments as per the statement of account subject to the undertaking of proposed completion of the said flat and further production of written progress certificate from the architect concerned of yours because my clientess shall not be kept in dark for period not known to her within which she is going to take possession of the flat.
>
> 7) That it is further to mention here that as per the various landmark pronouncements of National Commission as well as State Commissions of various states, in the said facts and circumstances, you are certainly liable to be prosecuted and also liable to the damages and interest thereon.
>
> In light of the above facts and circumstances, I do hereby call upon you which I hereby do and call upon you, to furnish or produce a written undertaking supported by a progress/completion certificate from your concerned architect within which the said flats shall be completed, within a period of 15 days from the date of the present legal notice, failing which I have clear instructions from my said clientess to invoke the proper forum under the relevant provisions of law against you.
>
> Without prejudice to the above, my said clientess shall have other legal rights against you as advised in law."

5.3. In reply to the aforesaid notice, the appellants stated details of payment made by the respondent and it was alleged that it had been a matter only of provisional allotment and no agreement as such was executed between the parties; and the allotment had been cancelled due to default on her part. After tabulating the payment made and the alleged dues, it was also stated on behalf of the appellants that they were ready to refund the amount by way of cheque but the respondent was seeking refund in cash, which was unjustified. However, a cheque in the sum of Rs. 10,68,031/- was sent towards refund with the said reply dated 08.11.2005 while stating, *inter alia*, as under: -

> "2. From the aforesaid it will be apparent that not only did your client not make the payments within time, but also failed to pay the interest and thereafter stopped making any payments whatsoever in spite of reminders. As in 2002 a sum of Rs 8,22,682.00 (Rupees Eight Lacs Twenty Two Thousand Six Hundred Eighty Two only) was due from your Client and against which your Client sent in early Feb. 2002 total sum of Rs 30,000/- (Rupees Thirty Thousand only) and again in end of Feb. 2002 a total sum of 45,000/- which was returned by my Clients since the allotment stood cancelled due your Client is aware of the allotment having stood cancelled, at least since the year 2002 and the notice now got sent is with ulterior motives. No payments as falsely alleged were even tendered in January, 2004 or after Feb. 2002. In last your Client pursuant to the cancellation of the allotment wanted the refunds in terms of the provisional Allotment of the sum of Rs 10,68,031.00 (Rupees Ten Lacs sixty Eight Thousand Thirty One) only in cash only which my Clients refused and offered to pay the cheque for the said amount, however, your Client pleaded with my Clients that they had not accounted for the payments made to my Clients and as such could not take back the Cheque in refund and thus were demanding the case However my Clients did not want to be privy to the illegal acts of your client and refused to comply with the demand of your client to pay the cash. It is for this reason that the notice has been issued on totally wrong facts and demands.

3. All the other contents of your notice are incorrect and are denied and my clients are along with this reply enclosing their Cheque No. 357757 dated 07 November 2005 of Citibank NA New Delhi for a sum of Rs 10,68,031.00 (Rupees Ten Lakhs Sixty Eight Thousand Thirty One) only in favour of your client towards refund of the amounts due to them under the Letter of Provisional Allotment. Please further note that there never was any Agreement between your Client and my Clients and in accordance with the accepted practice or the trade your client had only made a provisional booking when the project or my clients was at a nascent stage and when there was no certainty and when no flats were in existence. The said Provisional Allotment was to be converted into an Agreements to sell which as per the Law. Where the property is situated is required to be registered upon payments being made by your client and since your client did not comply with the terms or the Provisional Booking no such Agreement came into being and the client of your client after 3 years of the date when at least they admit to have become aware of the cancellation is also barred by time.

4. You are requested to advise your client accordingly and to refrain from any mis-conceived litigation. Upon cancellation of the Provisional allotment no flat has been reserved for your client and no such flat is in existence. The mis-conceived litigation if any instituted by your client shall be defended by my Clients at the cost and risk of your client."

5.4. On 30.11.2005, a rejoinder was sent on behalf of the respondent to the reply aforesaid, while returning the cheque and while objecting to the conduct of the appellants, in the following words: -

"I would like to bring to your notice that your client wrote letter dated 26.11.2001 in respect of flat No.(1) C-601 to my clientess whereby accepted receipt of Rs.4,43,501/- out of total amount of Rs.7,08,458/-, (2) C-602, receipt of Rs.4,46,912/- out of total amount of Rs.7,17,114.40 and (3) C-603, receipt of Rs.4,44,625/- out of total amount of Rs.7,32,147.50 and demanded balance amounts of Rs.2,64,957/-, Rs.2,70,202.40 and Rs.2,87,522.50 respectively. Photocopies of the aforesaid letters are enclosed for your kind perusal. Thus more than 60% of the total due amount has been paid by my clientess. Since there was no progress in the construction of the above said flats on part of your client, my clientess had no option but to stop the further payment. The cancellation of allotment without show cause notice to my clientess and even non intimation of cancellation order is illegal and thus amounts to illegal malafide intention on part of your

client. However, my clientess is still ready to make balance amount if the possession of the above said three flats are handed over to my clientess.

It is wrong and denied that your client ever intimated the stage of construction of the flats. My client had applied in the year 1989 and after 16 years she is being told that her allotment has been cancelled.

My client has been cheated by your client with dishonest intention and has misappropriated her hard money whereby causing huge loss, mental agony to my clientess.

The above said cheque is enclosed herewith and you are requested to acknowledge its receipt.

I, therefore, through this rejoinder call upon you to advise your client to immediately hand over the physical possession of the above said flats failing which my clientess shall be constrained to initiate legal proceedings both civil and criminal before competent court of law/forum and in that event your client shall be liable for its cost, risk and consequences."

5.5. After such exchange of communications, the respondent appears to have filed a civil suit, which was dismissed for want of jurisdiction. Thereafter, she preferred the said complaints in the District Forum. A copy of one such complaint has been placed on record and the relief claimed therein could be usefully reproduced as under: -

"Therefore, in the facts and circumstances of the case the Complainant most respectfully prays that this Hon'ble state Forum may kindly be pleased.

(1) To direct the respondent to give possession of the flat C-601 to the complainant within one month;

(2) To direct the opposite Parties to pay a sum of Rs. 14,00,000/- (Fourteen lakh rupees only) as damages for the loss of rent and mental agony and also direct the respondent to pay interest on 4,43,500/- @ of 18% per annum for 16 years i.e. Rs. 10,758,00/- i.e. total sum of Rs. 24,758,00/-

> (3) To grant any other and further reliefs as may be deemed fit and proper in the interest of justice.
>
> (4) To award exemplary costs in favour of the Complainant and against the respondent."

5.6. The District Forum, while taking the three complaint cases together, proceeded to reject the same while observing, *inter alia*, as under:-

> "7. Apart from it, the Complainant is also guilty of concealment of the material fact from this Forum. OP has alleged that on the same cause of action a case is pending before Civil Court at Karkardooma Courts, Delhi and the Complainant has not denied this fact. Moreover, complaint is also barred by limitation. The Complainant is an NRI. She had invested her amount here in real estate. The Complainant also filed two more complaints here alongwith this complaint therefore as rightly objected by the OP that all such activities of the Complainant were made with a view to earn profit by investing her money in real estate. Thus, Complainant tried to avail of the services of the OP for commercial purpose. Whereas, the provisions of Consumer Protection Act, 1986 were made for the benefit of a Consumer. Thus, Complainant does not fall within the category of consumer as defined under section 2(d) of the Act. Therefore, taking the case of the Complainant from any angle, we do not find any merit in her case hence, we are constrained to dismiss the complaints. Copy of this order be placed on all the files."

<u>The State Commission awarding compound interest</u>

6. The State Commission, however, did not agree with the reasoning of the District Forum and held that the complaints made by the respondent were maintainable in law. As noticed, those questions relating to maintainability are not involved in these appeals and hence, we need not dilate on the same.

6.1. The relevant aspect of the matter is that after having overruled preliminary objections of the present appellants, the State Commission

observed that 60% of the total sale consideration was paid by the complainant-respondent; that possession of the flats booked by her was not handed over even after expiry of the agreed period; that the complainant, having opted for the construction-linked plan, was to make payment of the balance amount on delivery of possession; and the allegation of her being in default was to be rejected because, on inspection of the site, construction was not found as per schedule. Having said so, the State Commission proceeded to consider the question as to how the complainant was to be compensated for the monetary loss, and mental and physical harassment suffered at the hands of opposite parties because of non-delivery of the allotted flats. The relevant observations of the State Commission read as under: -

> "19. In these circumstances all the preliminary objections of the OPs/respondents, since not maintainable are sequentially rejected. Coming to the merit of the case, it is a fact that booking of three flats was done. This is also indisputed that 60% of the total sale consideration was paid to OPs. Possession of the flats so booked were not handed over although the agreed period was over. The complainant having opted for the construction linked plan had to pay the balance amount on the delivery of the possession of the flats. But on inspection of the site the construction in the project was not found as per schedule. Finally the objection of the OP to the effect that the complainant was defaulter in making the payment cannot sustain since the complainant had opted for consideration linked plan and she had to make the payment beyond 60% on completion of the construction and thus this objection is also overruled. In these circumstances the complaint deserves to be accepted. Accordingly the orders passed by the District Forum dismissing the complaint since not sustainable are set aside.
> 20. Having arrived at the said conclusion, the point for consideration is as to how the Complainants are to be compensated for the monetary loss, mental and physical

> harassment he has suffered at the hands of OPs on account of non-delivery of the allotted flat.”

6.2. The State Commission, thereafter, examined various connotations of the term “compensation” and observed that the Commission or the Forum was entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. With reference to the decision in ***Ghaziabad Development Authority v. Balbir Singh*: (2004) 5 SCC 65**, it was observed that this Court had indicated the factors to be kept in view while determining adequate compensation; and in cases where possession was directed to be delivered to the complainant, the compensation for harassment would necessarily have to be less because that party was being compensated by increase in the value of the property but, in cases where only money was to be refunded, the party would be suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot and he was deprived of the same, as also the benefit of price escalation. The State Commission also observed that in such case (only of refund of money), the complainant would suffer substantial loss on account of payment of interest on the loans raised; depreciation in the money value; and escalation in the cost of construction etc. The State Commission also observed that in these proceedings, necessary orders regarding refund of the deposited amount could be passed, notwithstanding the proceedings in any other forum. The relevant observations of the State Commission read as under: -

> “21. The provisions of the Act enable a consumer to claim and empower the Commission/Forum to redress any injustice done to a consumer. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The word compensation is of very wide connotation. It may constitute actual loss or expected loss and may extend the compensation for physical, mental or even emotional suffering, insult or injury or loss. Therefore, for the purpose of determining the amount of compensation, the Commission/Forum must determine the extent of sufferance by the consumer due to action or inaction on the part of the Opposite Party. In Ghaziabad Development Authority Vs. Balbir Singh – (2004) 5 SCC 65, while observing that the power and duty to award compensation does not mean that irrespective of facts of the case, compensation can be awarded in all matters on a uniform basis, the Hon’ble Supreme Court gave certain instances and indicated the factors, which could be kept in view while determining adequate compensation. One of the illustrations given in the said decision was between the cases, where possession of a booked/allotted property was directed to be delivered and the cases where only monies paid as sale consideration, are directed to be refunded. The Hon’ble Court observed, in this behalf, that in cases where possession is directed to be delivered to the Complainant, the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply refunded, then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is not only deprived of the flat/plot, he has been deprived of the benefit of escalation of the price of the flat/plot. Additionally, in my view, in such a situation, he also suffers substantial monetary loss on account of payment of interest on the loans raised; depreciation in the money value and escalation in the cost of construction etc.
>
> 22. From the above it is apparent that this Commission can pass orders regarding the refund of the amount deposited to the company by the complainants, notwithstanding the proceedings pending in any other forum.”

6.3. After the observations afore-stated, the State Commission took note of a few decisions against the builders or the real estate developers and on the rights of the allottee to decline possession at the belated stage. Thereafter, the State Commission referred to the contentions

urged on behalf of the complainant on the point of compensation based on the decision of COMPAT in the case of ***Dr. Manjeet Kaur Monga***, which was affirmed by this Court. In paragraph 29 of the judgement, the State Commission presented its observations as also extractions from the said decision of COMPAT in the following manner: -

> "29. The ld. Counsel for the appellant while arguing on the point of compensation has submitted that the case under consideration is on the facts of Manjit Kaur Monga versus K.L. Suneja and ors decided by the Hon'ble COMPAT and upheld by the Hon'ble Supreme Court of India in the matter of Manjit Kaur (Supra)-(2018) 14 SCC 679 holding as under:-
>
> > *"36…. It is clear 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. Therefore, there is no escape from the conclusion that they are guilty of unfair trade practice as defined under Section 36-A(1)(i)(ii) and (ix) of the Act.*
> >
> > *37. The cancellation of allotment made in favour of the complaint deserves to be declared as wholly arbitrary, illegal and capricious. It is not in dispute that Smt. Gursharan Kaur amount. The complainant, Dr. (Mrs.) Manjeet Kaur Monga deposited three other instalments. She did not despite further instalments 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 complaint's protest dated 22.05.2002 as her disinclination to take the flat. …..Therefore, it must be held that the complainant was justified in not paying further instalments of price and the respondent committed grave illegality by cancelling the allotment."*
> >
> > *The quantum of compensation as has been decreed in the aforementioned judgement of the Hon'ble COMPAT and also upheld by the Hon'ble Supreme Court of India stipulates a fair, just, equitable and reasonable award. The respondent has unscrupulously deprived the appellant of the due benefit of escalation in property prices since 1989 till date and*

therefore, in order to put the appellant in the same place and deny the benefit of his own illegality to the respondent this Hon'ble Court ought to compensate the appellant in terms of the prevailing market value of the property in question.
In conclusion, the appellant seeks the return of the instalments paid by her to the respondent plus compound interest @ 15% p.a. from the date of actual refund, in addition to damages quantified at Rs. 14,00,000/- for mental agony and expenses incurred in protracted litigation."

6.3.1. We are constrained to observe, in regard to the above-quoted part of the judgment of the State Commission that in the said paragraph 29, the State Commission purportedly extracted a few parts of paragraphs 36 and 37 of the decision of COMPAT in the case of ***Dr. Manjeet Kaur Monga*** but then, placed two more passages as if being the part of extractions, though the said two passages had obviously been the part of submissions of the complainant where for the first time, the claim of compound interest @ 15% p.a. occurred in this case. Although, such a presentation in the judgment dated 12.03.2020 of the State Commission (as appearing in the copy of judgment placed before us – pp. 166-167 of the paper book) seems to be that of a typographical/clerical error but, we have reproduced the same verbatim, for being relevant for the present purpose.

6.4. After the observations foregoing, the State Commission found the case of the present complainant akin to that of ***Dr. Manjeet Kaur Monga***; and when the units in question had already been sold, found it just and proper to direct the present appellants to refund the deposited amount together with compound interest @ 14% from the date of deposit. This,

according to the State Commission, was in line of the decision of this Court in ***Malay Kumar Ganguly v. Sukumar Mukherjee (Dr.)*****: [2009] CPJ 17 (SC).** The State Commission observed and directed as under: -

> "30. In fact reliance of the judgement referred to in the preceding paragraph against the same Ops, would be apt and best suited since against the same builder and involving similar facts In the facts and circumstances of the case, the possession of the unit having already been sold, is not possible to be handed over putting the complainant to a position where she had nothing to fall back upon, the Ops/respondents are directed to refund relying on the judgement in the matter of Manjit Kaur Monga versus K.L. Suneja and ors (Supra) decided by the hon'ble Compat and upheld by the Hon'ble Supreme Court of India, the deposited amount plus compound interest at the rate of 14% from the date of deposit. This would be in line with the principles set out by the Hon'ble Supreme Court of India, in the matter of Malay Kumar Gangully versus Sukumar Mukherjee (Dr.) as reported in III [2009] CPJ 17 (SC) providing that a person is entitled to damages/compensation as nearly as possible sum of money which would have been if he had not sustained the wrong. This would meet the ends of justice.
>
> 31. Ordered accordingly leaving the parties to bear the cost.
>
> 32. FA-122/2014 and FA-123/2014 being on the same lines bearing the same facts and on the common point of law are also disposed of accordingly with directions to the Ops as contained in para 30 of this order."

<u>Approval by the National Commission</u>

7. In the revision petitions preferred by the appellants against the judgment and order dated 12.03.2020 so passed by the State Commission, the National Commission, after rejecting other contentions of the appellants, found that the facts of ***Dr. Manjeet Kaur Monga's*** case were almost identical in relation to the flats booked by the respondent in the same project of the appellants. The National Commission took note of the observations of this Court in ***Dr. Monga's*** case and rejected the

contentions of the appellant in seeking to avoid the application of the said decision, *inter alia*, in the following words: -

> "32. From the bare reading of this provision, it is clear that the proceedings continuing under MRTP Act before its repeal had been saved under Section 66(1)(A). The argument of learned counsel for the Opposite Party that the order of Dr. Manjeet Kaur Monga's case (supra) had been passed under a repealed Act and therefore is not applicable in this case, has no force and that the argument is totally misconceived and misdirected. Also, the order in Dr. Monga's case (supra) was passed in the year 2015 after the repeal of MRTP Act which was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed its order in 2018. Therefore, it is clear that the order of Dr. Manjeet Kaur Monga's case (supra) was pronounced after the repeal of the MRTP Act and not during the existence of the MRTP Act.
>
> 33. There is no dispute that the facts of the Monga's case (supra) and the present case are identical as the flats were booked in the same project of the Petitioner, although by different allottees and that in both the cases, despite payment of the money, the allotted flats were not given to its allottees within the stipulated period or even thereafter. In the present case, the flats had been sold during the pendency of the Complaint. The Opposite Party, therefore, is not in a position to hand over the possession of the said flats to the Complainant and the Commission is fully empowered to grant any other relief which is just and proper in such circumstances. It is also settled proposition of law that the Commissions are bound to follow the dictum of the superior Foras on the identical facts. In the present case, on the identical facts there is a judgment of Hon'ble Supreme Court, although the remedy had been sought in that case under a different provision of the Act, however, the findings are on the identical facts of the case and so the order is binding on the Foras below…."

7.1. After reproducing certain passages from the decision of this Court in ***Dr. Manjeet Kaur Monga*** (supra), the National Commission concluded on the matter by dismissing the revision petitions in the following terms: -

> "34. It is also apparent that the Complainant has specifically argued before the State Commission and also mentioned this fact in her written submissions that they should be awarded the same relief as had been granted in Dr. Monga's case (supra) and that

> this contention was not opposed by the Opposite Party before the State Commission.
>
> 35. This Commission has a limited revisional jurisdiction. It can set aside the impugned order in exercise of its revisional jurisdiction only when the findings are perverse or without jurisdiction.
>
> 36. From above discussion it is clear that in this case, the State Commission had duly followed the dictum of the Hon'ble Supreme Court in Dr. Manjeet Kaur Monga's case (supra) and therefore, it cannot be said that the findings of the State Commission are perverse or without jurisdiction. We found no illegality or infirmity in the impugned order. The present Revision Petitions have no merit and the same are dismissed."

Rival Contentions

8. While assailing the orders aforesaid, awarding compound interest to the respondent, learned senior counsel Mr. Ranjit Kumar appearing on behalf of the appellants has put forward six-fold submissions which could be summarised as follows:

8.1. Learned senior counsel has contended in the first place that the Act of 1986 does not confer any power on the Consumer Fora established thereunder to award compound interest on the compensation amount; and for being not envisaged under or by the scheme of the Act of 1986 and being not provided in the contract either, such awarding of compound interest cannot be countenanced. Learned senior counsel has submitted that wherever the legislature intended to confer the power to grant compound interest, an enabling provision has been incorporated in the statute. In this regard, the learned counsel has given several examples, like Section 16 of the Micro, Small and Medium Enterprises

Development Act, 2006; Section 5 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993; Section 23 of the Trusts Act, 1882; Section 8 of the Payment of Gratuity Act, 1972; Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2015; and Section 3 of the Usurious Loans Act, 1918. Learned counsel has cited the decision of this Court in the case of ***Central Bank of India v. Ravindra*: (2002) 1 SCC 367** in support of the submissions that with the contract not providing so, compound interest could not have been awarded. It has also been contended that in the absence of any agreement or any statutory provision or mercantile usage, interest payable could only be at the market rate and could never be compounded at whopping 14%. Learned counsel has also relied upon the decision in ***Clariant International Ltd. and Anr. v. Securities & Exchange Board of India:* (2004) 8 SCC 524.**

8.2. In the second limb of submissions, learned senior counsel for the appellants has contended that in the recent decisions, this Court has only awarded simple interest with the rates ranging from 6% to 9% p.a. in the cases of deficiency of service by the builders. In this regard, learned counsel has referred to the rate of interest awarded in ***Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor*: (2022) SCC OnLine SC 416; *NBCC (India) Ltd. v. Shri Ram Trivedi*: (2021) 5 SCC 273; *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna and Ors.*: (2021) 3 SCC**

241; *DLF Home Developers Limited and Anr. v. Capital Greens Flat Buyers Association and Ors.*: (2021) 5 SCC 537; *Arifur Rahman Khan and Ors v. DLF Southern Homes Pvt Ltd and Ors.*: (2020) 16 SCC 512 and *DLF Home Panchkula Pvt Ltd and Ors. v. DS Dhanda and Ors.*: (2020) 16 SCC 318. The learned counsel has particularly referred to the passage in the case of ***Ireo Grace Realtech*** (supra) wherein, the prayer for compound interest @ 20% was rejected, for having no nexus with the commercial realities of the prevailing market. Learned counsel would submit that in the face of such decisions, taking even the highest interest rate at 9% p.a., the total amount with interest payable to the respondent on 09.05.2022 (the date of issuance of notice by this Court) would be Rs. 49,87,129/- whereas the respondent has already withdrawn a sum of Rs. 2,55,95,119/-, which was deposited by the appellants pursuant to the directions of the National Commission and then by this Court, alongwith accrued interest. It has been submitted that the amount so received by the respondent would be approximately equal to the principal amount together with simple interest @ over 60% p.a., calculated from the year 1989 to the month of June, 2022.

8.3. Learned senior counsel has contended in the third limb of submissions that the directions as issued in the present matter would result in unjust enrichment of the respondent inasmuch as the present value of the award would be around Rs. 7.35 crore and that would be

approximately 4.5 times the cost of all the three flats taken together today as per the current market rate. Pertinently, the learned senior counsel would submit, the respondent had, until the time of cancellation, paid only a sum of Rs. 13.35 lakhs for all the three flats which was only 25% of the final price that would have been payable at the time of taking possession. In this regard, it has also been argued that even with reference to the decision in ***Ghaziabad Development Authority*** (supra), the compensation to be awarded to the respondent cannot exceed the fair market value of the flats and as per the circle rates, it would be around Rs. 2.04 crore and even as per the precedents of sale transactions, the amount could at the most be Rs. 2.25 crore as per the average sale price based on 10 sale precedents in the same building and for the flats of similar size. In any case, the amount of compensation on the basis of present market realities would be much lower as compared to the compensation quantified on the basis of compound interest @ 14%.

8.4. In the fourth limb of submissions, learned senior counsel for the appellants has argued that in the present case, the respondent had neither demanded nor prayed for the relief of compound interest in the complaints filed before the District Forum; and with reference to the decision of this Court in the case of ***Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. and Ors.*****: (2010) 11 SCC 557**, it has been contended that the Consumer Fora could not have granted relief which had not been

specifically prayed for. Further to this, learned counsel has also contended that in the present case, there had not been any finding by the State Commission or the National Commission as regards the alleged loss or injury suffered by the respondent. Although, the respondent pleaded loss of rent but no evidence was brought on the record on this issue nor had it been the case of the respondent that she was staying in a rented accommodation or that she had availed loan for purchasing the flats and was making payment of instalments to the lender. It has, thus, been argued that without any pleading, without any evidence, and without any finding on any loss or injury, the State Commission proceeded to direct the refund of deposited amount with compound interest @ 14%, which remains wholly unjustified.

8.5. Fifthly, learned senior counsel for the appellants has referred to the decision of this Court in the case of ***Dr. Manjeet Kaur Monga*** (supra) in detail and has contended that therein, the only argument before this Court was as to whether the Tribunal under MRTP Act was required to determine the specific amount towards compensation as envisaged by Section 12-B thereof and the observations in paragraph 5 of the decision, this Court did not interfere with the award of compound interest in that context. The learned counsel has referred to a 3-Judge Bench decision of this Court in the case of ***Sanjay Singh and Anr. v. U.P. Public Service Commission, Allahabad and Anr.*****: (2007) 3 SCC 720** to submit that it is

the *ratio decidendi* of a judgment and not the final order therein which form a precedent and, therefore, ***Dr. Monga's*** case cannot be considered to be a binding precedent so far as the proposition with respect to compound interest is concerned.

8.6. In the sixth fold of submissions, essentially being in the alternative, the learned senior counsel has submitted that even in ***Dr. Manjeet Kaur Monga's*** case (supra), this Court upheld the directions for refund with compound interest only until the date of refund post-cancellation, which came to Rs.31,87,131/- and which, at the relevant time, was also the approximate market value of the said flat. In this regard, learned counsel for the appellants has also referred to the subsequent decision in ***Dr. Manjeet Kaur Monga's*** case by this Court in ***K.L. Suneja and Anr. v. Dr. (Mrs.) Manjeet Kaur Monga (D) Through Her LRs and Anr*: 2023 SCC OnLine SC 91.** It has, thus, been contended that the impugned orders, which direct a refund of the principal amount together with compound interest @ 14% without even specifying the period for which it would be payable, are required to be interfered with by this Court. While elaborating on this line of submissions, learned counsel has submitted that in the present case, the appellants had refunded the entire amount (after deducting the earnest money deposited by the respondent) through the cheque dated 07.11.2005 for an amount of Rs. 10,68,031/- and hence, assuming without admitting the liability

towards compound interest at the rate awarded by the State Commission, the total amount payable until 08.11.2005 would be Rs. 84,76,540/- and not beyond. Learned counsel would submit that awarding of compound interest without taking note of the facts of refund cheque issued by the appellants remains wholly unjustified.

9. On the other hand, learned senior counsel for the complainant-respondent Mr. Sidharth Luthra has duly supported the proposition of awarding compound interest in this case and has strenuously countered the submissions made on behalf of the appellants.

9.1. With reference to the background aspects, learned senior counsel has submitted that the respondent purchased 3 flats from the appellants in the year 1989 when she was 39 years of age in anticipation of moving to India and staying together with her daughters; and the appellants promised to complete the construction and deliver the flats within 36 months i.e., by the year 1992 and thus induced the respondent to pay 60% of the consideration amount in a construction-linked payment plan by 1994. However, fact of the matter had been that there was no construction on the ground until about the years 2003-2005 and, thereafter, the appellants fraudulently sold the same flats to a third party without even intimating the alleged cancellation to the respondent. Learned counsel would submit that the appellants have failed to bring on record any cancellation letter pertaining to the said 3 flats and on the

contrary, they have made inconsistent statements about the date of cancellation while sometimes alleging that cancellation was in the year 2002 whereas stating before the National Commission that the cancellation was on 25.04.2005. Thus, it has been contended that the appellants had neither been fair in their dealings nor consistent in their stand.

9.2. While placing strong reliance on the decision of this Court in ***Dr. Manjit Kaur Monga*** (supra), learned senior counsel has submitted that the said case relating to the same project and the same builder (the appellants) makes it clear that the appellants had duped the respective complainants by employing almost the same *modus operandi*. Learned counsel would submit that as regards claim for compensation, the respondent's case stands on a better footing than the case of ***Dr. Monga*** inasmuch as in the said case, the appellants had cancelled the allotment by a letter dated 30.04.2005 whereas no such cancellation letter is on record in the present case and in fact, the appellants stated about the alleged cancellation only in their reply dated 08.11.2005 to the notice served by the respondent on 15.10.2005. This is coupled with the fact that the respondent had made payments of Rs. 30,000/-, Rs. 45,000/- and Rs. 75,000/-, respectively on 09.02.2002, 20.02.2002 and 25.01.2004, which shows that she was keenly interested in purchasing the flats for her private use.

9.2.1. Learned counsel has further submitted that while both, the respondent and the said Dr. Manjit Kaur Monga, were duped by the appellants and resultantly both sought possession of their respective flats, the respondent invoked jurisdiction under the Act of 1986 whereas the said complainant approached COMPAT under the MRTP Act. Both the fora had concurrent jurisdiction as regards unfair trade practice, though the respondent also complained of deficiency of service. Learned counsel has referred to the provisions contained in Section 12-B(3) of the MRTP Act and Section 14(1)(d) of the Act of 1986 and has submitted that the provisions are in essence identical, empowering the respective fora to award compensation though, the power to award compensation under the Act of 1986 is wider in scope.

9.2.2. Learned senior counsel has further submitted that in ***Dr. Monga's*** case, this Court has affirmed the measure of compensation for an identically placed complainant by refund of deposit together with 15% p.a. compound interest from the date of deposit till the date of return. Learned counsel has recounted the factors constituting rationale in awarding such compound interest in ***Dr. Manjit Kaur Monga's*** case, including those of extraordinarily long harassment; deprivation of flat; inordinate delay of construction; illegal retention of deposit; and then, compulsion to pursue protracted litigation. Learned counsel would submit that the respondent had been subjected to rather excessive harassment

for about 34 years and presently at the age of 73 years, she is required to pursue this litigation. Further, in ***Dr. Manjit Kaur Monga's*** case, the deposits were retained by the appellants for about 12 to 15 years whereas in the case of the respondent, the deposits were illegally retained and utilized by the appellants for 29 to 34 years. Thus, according to the learned counsel, the award of compound interest to the respondent does not call for any interference.

9.3. Learned senior counsel has further cited the decision in ***Wallersteiner v. Moir (No. 2):*** **(1975) Q.B. 373** to highlight the principles therein that compound interest (i.e. interest with yearly rests in case no other frequency of rests is specified) should be awarded under the equitable jurisdiction of the Court where the wrongdoer utilizes the money retained for business purpose and thereby making the profit thereon. Equally, it should be presumed that the wronged person would have made the most beneficial use of the money, had it not been deprived of it. It was further held that the '*justification for charging compound interest normally lies in the fact that profits earned in trade would likely be used as working capital for earning further profits*' and that the '*application of this rule is not confined to cases in which a trustee or agent has misapplied trust funds or a principal's property, nor is it confined to trustees and agents.*'

9.3.1. In regard to the principles surrounding and governing the award of compound interest, learned senior counsel has also made elaborate reference to the decision of this Court in the case of ***Indian Council for Enviro-Legal Action v. Union of India and Ors.*****: (2011) 8 SCC 161**.

9.4. Learned senior counsel has further contended that the argument on behalf of the appellants that the compound interest could only be awarded if provided for in the statute remains baseless inasmuch as the Act of 1986 provides for an award for compensating the consumer for any loss or injury including punitive damages; and there are no fetters on the way in which such an award may be expressed. According to the learned counsel, this view has been affirmed by this Court in ***Dr. Monga's*** case, wherein an award expressed in terms of compound interest has been held to be falling within the definition of "compensation." Secondly, this Court has held that '*the inherent powers in the Court and principles of justice and equity are sufficient to enable an order directing payment of compound interest; rather, the power to order compound interest as part of restitution cannot be disputed, otherwise there could never be restitution*.'

9.5. Learned senior counsel for the respondent has further contended that reliance on behalf of the appellants on certain decisions of this Court awarding simple interest was wholly misplaced for the noteworthy

distinction in the facts of all such cases and the present case that such cases dealt with delayed possession of flats by the builder as opposed to denial of possession altogether. Learned counsel has underscored the submission that in case compensation is awarded in addition to the possession of the property itself, the consumer is not deprived of the escalation in property prices and thus, an award in terms of simple interest may be suitable, on the given set of facts. Secondly, none of the cases cited by the appellants deal with an exceptionally long period of illegal retention of consideration by the builder i.e., 29-34 years. It is undeniable that the property prices escalate exponentially over such long period of over three decades and thus , any award must correlate to the economic realities of real-estate price escalation, as well as the enormous unjust enrichment of the builder.

9.6. Learned counsel has submitted that in the present case, the appellants have illegally retained and utilized the payments made by the respondents for a period of 29-34 years and made huge profits thereupon in real-estate projects. In the event the appellants availed such amounts for its business purpose from a bank, even at the most conservative rates [15.95% p.a. compound interest], they would have to repay a sum of Rs. 17.52 crore. Thus, the appellants at least made this profit by utilizing the payments made by the respondent leading to unjust enrichment. It is submitted that during the period 1989-1994 when the

appellants collected funds from the respondent, lending rates were historically at an all-time high (about 20% p.a. in 1991) and therefore, the *modus operandi* of the appellants in collecting 'free capital' from innocent home buyers without any intent of delivering on their promise, deserves to be disapproved with award of penal damages.

9.6.1. Learned senior counsel has further submitted that the respondent has made investment in real-estate and not in any other sector; and most conservative measure of escalation of real estate prices is provided by comparing circle rates determined by the Government authorities. In 1989, the circle rate for real estate in Sector 4, Vaishali, Ghaziabad was Rs. 850/sq. mtr. whereas, since 2016, this circle rate escalated to Rs. 74,200/sq. mtr. Thus, property prices in Sector 4, Vaishali, Ghaziabad have risen exponentially since 1989, at least by a multiple of 87.3 times. According to learned counsel, another way of mathematically expressing the same escalation in property prices, other than by way of a multiple, is by way of computing a rate of compounding and as such, it is equivalent to say that property prices in the area in question have escalated at a compound rate of 15% p.a. from 1989 for the next 32 years.

9.6.2. Learned senior counsel has further argued that the contention on the part of the appellants with reference to simple rate of interest and disputing the reliance on circle rate is also misleading for the reason that

in the year 1989, no circle rates of flats were available. Thus, the respondent has used the then circle rate for land and the present circle rate for land for the purpose of drawing an “apples-to-apples” comparison. To arrive at a more accurate present value of the 3 flats, the respondent has bifurcated the admitted purchase price in 1989 into land and building components, in terms of the allotment letter and thereafter, the building component is escalated in terms of the CPWD cost index and the land component is escalated in terms of the increase in circle rate for land. Thus, according to the learned counsel, the present value of 3 flats has rightly been arrived at Rs. 9.06 crore.

9.6.3. In regard to such value indicators, it has also been submitted on behalf of the respondent that undervaluing of transaction was that of common knowledge and this apart, value of the project has depreciated over the decades due to factors such as deterioration of the property upon usage, depression in rates due to multiple litigations etc. Thus, the respondent has rightly placed on record the present cost of alternative 3 flats at about Rs 6.48 crore and has computed the loss of rent for 31 years at Rs 1.94 crore. Viewed from any angle, according to learned senior counsel, the amount receivable under the orders impugned remains the minimum towards entitlement of the respondent.

9.7. As regards the alternative submission of limiting the award of compound interest until the year 2005 in terms of ***Dr. Monga’s*** case, the

learned senior counsel has submitted that the said proposition remains inapplicable to the present case for the reason that initial refund of money in ***Dr. Monga's*** case was by way of a pay order and thus, the appellants did not utilize or retain the money after 30.04.2005 whereas in the present case, they merely attempted to send a cheque with the reply dated 08.11.2005 which was never encashed and was promptly returned by the respondent with rejoinder dated 30.11.2005 and such returned cheque was duly accepted by the appellants. In regard to the later decision in the case of ***K.L. Suneja v. Dr. (Mrs.) Manjeet Kaur Monga*** (supra), it has also been submitted that the appellants rather conceded before this Court that in case money was lying in their account, they would be liable to pay compound interest @ 15% p.a. until the money was paid by them. It has been submitted that, in the present case, money was debited from the appellants' account for the first time only on 25.11.2020 when they deposited 25% of the award amount pursuant to the direction of the National Commission. Even if they have made further payment according to the order of this Court to the tune of Rs. 1 crore, compound interest must run on the remainder of the portion of the award amount, which the appellants have continued to retain and enjoy.

9.8. It has, therefore, been contended that the facts of the present case are more egregious than the facts of the ***Dr. Monga's*** case and in the overall circumstances, it would be appropriate and just to determine

the compensation in keeping with the formula for measure of such compensation adopted in ***Dr. Monga's*** case in order to avoid unequal treatment to the respondent. It has also been submitted that in fact the appellants did not argue against the award of compound interest before the State Commission and thus, their challenge ought not be considered under Article 136 of the Constitution of India, for such an argument having been consciously given up by them. The decision of this Court in the case of ***Transmission Corp. of AP Ltd. v. P. Surya Bhagavan***: **(2003) 6 SCC 353** has been referred to in this regard. It has also been argued in reference to the decision in ***Balram Prasad v. Kunal Saha***: **(2014) 1 SCC 384** that while awarding just compensation, merely the form of claim made by the complainant may not be considered decisive.

10. In rejoinder submissions, the learned senior counsel for the appellants has contended that the decision in ***Dr. Manjeet Kaur Monga*** cannot be read as an authority for the proposition that compound interest is invariably to be granted in all these cases. Learned counsel has also submitted that the decision in the case of ***Indian Council for Enviro-Legal Action*** (supra) is also not applicable as the compound interest therein was awarded on the unique facts of that case and where the mandate of this Court was circumvented for more than a decade. Learned counsel has also submitted that the judicial precedents of English Courts cannot be applied to the present case, in view of specific law in India that

compound interest would be operated only if the statute or the contract provides for the same; and there being no such prescription in the statute or in the contract, awarding of compound interest cannot be said to be justified.

11. We have given our anxious consideration to the rival submissions and have examined the record with reference to the law applicable.

Matters of form and pleading not relevant in the present case

12. As noticed, in these appeals, a wide variety of rival submissions have been presented before us on the question as to whether the Consumer Fora had been justified in awarding and approving compound interest at the rate of 14%. While dealing with these submissions, we may observe at the outset that, in our view, neither the submissions on behalf of the appellants about want of pleading and prayer for compound interest nor the submissions on behalf of the respondent, about want of opposition before the State Commission by the present appellants, deserve much dilation. In this regard, it may be observed that in the complaint case as originally filed, the respondent did not make any prayer for award of compound interest; rather her prayer had essentially been for directions to the appellants to deliver the flats and to award damages. If at all, the respondent claimed simple interest @ 18% p.a. It appears that such a submission seeking compound interest was properly made, with reference to the decision in ***Dr. Manjeet Kaur Monga's*** case (supra), for

the first time by the claimant-respondent only before the State Commission. As noticed hereinbefore, the State Commission, while reproducing two passages from the decision of COMPAT, further reproduced a part of written submissions of the claimant-respondent claiming compound interest. The State Commission did not elaborate much on the principles governing its powers and those governing awarding compound interest; and rather considered the decision in ***Dr. Monga's*** case to be decisive of the matter. In the revision petitions before the National Commission, the appellants seriously contested the applicability of the decision in ***Dr. Monga's*** case to the facts of the present case, albeit on a different ground that the decision rendered in the proceedings under MRTP Act cannot be applied to the present proceedings under the Act of 1986.

12.1. We shall be dealing with the relevant aspects concerning applicability of ***Dr. Monga's*** case a little later but suffice it would be to observe that in the given set of circumstances, the respondent does not appear justified in suggesting that the appellants had consciously given up their contest to the claim of compound interest. The other side of the matter is that looking to the prayers in the complaints, the complainant-respondent could not have been denied the proper relief, if available on the facts of the case and permissible on the applicable legal principles. Thus, the contentions as regards the matter of form and pleading are left

at that and without further discussion on the decision cited on behalf of the appellant in the case of ***Manohar Lal*** (supra) as also the decisions cited on behalf to the respondent in the cases of ***Transmission Corp. of AP Ltd.*** and ***Balram Prasad*** (supra).

The cited decisions on award of interest in real estate dealings

13. Reverting to the rival submissions concerning the question as to whether the Consumer Fora had been justified in awarding and approving compound interest at the rate of 14% and a vast variety of alternative methods for computing damages with reference to the loss said to have been suffered by the respondent and the punitive measures against the appellants, as noticed, strong reliance has been placed by the State Commission and the National Commission as also by the respondent on the decision in ***Dr. Manjeet Kaur Monga*** (supra), which arose out of the case for compensation under the provisions of MRTP Act. The main plank, rather substratum, of the decision of State Commission in awarding compound interest had been the view taken and relief granted against the appellants in relation to the very same project and in relation to a similar grievance of the said other prospective buyer, Dr. Monga, who was also deprived of the fruits of her deposits.

14. However, before adverting to the decision in the case of ***Dr. Manjeet Kaur Monga*** (supra) in necessary details, we may usefully refer to the other decisions cited on behalf of the appellants in support of the

contention that usually in such matters against the builders, this Court has awarded simple interest in the range of 6% to 9% p.a., which has been countered on behalf of the respondent that the said decisions more or less related to the cases of delayed delivery of possession and not deprivation of flat altogether and retention of money for over three decades.

14.1. In the case of ***DLF Homes Panchkula Pvt Ltd*** (supra), the facts-sheet indicates the features of delay in delivery of possession and grant of compensation for such delay by way of interest as also a lump sum and therein, this Court observed that there cannot be multiple heads to grant damages and interest when the parties had agreed to payment of damages in a particular manner. In the given context, this Court, *inter alia*, observed as under:

> "**15.** The District Forum under the Consumer Protection Act, 1986 ("the 1986 Act") is empowered inter alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb. The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and has no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages @ Rs 10 per square foot per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there have to be exceptional and strong reasons for SCDRC/NCDRC to award compensation at more than the agreed rate.

> **16.** Though the 1986 Act empowers the authorities to award compensation for any loss or injury including building damages but the order of NCDRC or that of SCDRC of awarding compensation is without any foundation being laid down by the complainant on judicially recognised principles and is by rule of thumb. Therefore, we find that grant of compensation under various heads granted by NCDRC cannot be sustained."

14.2. The case of ***Wing Commander Arifur Rahman Khan*** (supra) had been another one of delay in delivery of possession wherein this Court enunciated principles for awarding of compensation for such delay. In that context, this Court held that compensation in excess of stipulated amount in the agreement was allowable when the stipulated compensation was unreasonable and unfair. Therein, this Court ultimately allowed simple interest @ 6% p.a. with the following observations and directions:

> "**69.** For the above reasons we have come to the conclusion that the dismissal of the complaint by NCDRC was erroneous. The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities. The reasoning of NCDRC on these facets suffers from a clear perversity and patent errors of law which have been noticed in the earlier part of this judgment. Allowing the appeals in part, we set aside the impugned judgment and order of NCDRC dated 2-7-2019 [*Rasheed Ahmad Usmani* v. *DLF Ltd.*, 2019 SCC OnLine NCDRC 84] dismissing the consumer complaint. While doing so, we issue the following directions:
>
> **69.1.** Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated @ 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the

> execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate."

14.3. The case of ***DLF Homes Developers Ltd.*** (supra), dealt with by a 3-Judge Bench of this Court, had also been of delay in delivery of possession and therein, this Court held that compensation for such delay over and above contractual rate was allowable even when the seller had given the option to the buyer to exit with interest. In that context, this Court held that such exit option would not disentitle the flat purchaser from claiming compensation. This Court observed, *inter alia*, as under: -

> "8….The fact that the developer offered an exit option with interest at 9% would not disentitle the flat purchasers from claiming compensation. For a genuine flat buyer, who has booked an apartment in the project not as an investor or financier, but for the purpose of purchasing a family home, a mere offer of refund would not detract from the entitlement to claim compensation. A genuine flat buyer wants a roof over the head. The developer cannot assert that a buyer who continues to remain committed to the agreement for purchase of the flat must forsake recourse to a claim for compensation occasioned by the delay of the developer. Mere refund of consideration together with interest would not provide a just recompense to a genuine flat buyer, who desires possession and remains committed to the project. It was for each buyer to either accept the offer of the developer or to continue with the agreement for purchase of the flat.
>
> 9. Similar is the position in regard to the submission on the appreciation of the value of the flats. Undoubtedly, this is one factor which has to be borne in mind in considering whether and, if so to what extent, compensation for delay should be awarded. Having regard to the principles which have been enunciated in the earlier two decisions [Arifur Rahman Khan v. DLF Southern Homes (P) Ltd., (2020) 16 SCC 512] , [Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725 : (2019) 3 SCC (Civ) 37] which have been noted above, we are unable to subscribe to the submission that the flat buyers are not entitled to any payment whatsoever on account of delayed compensation."

14.3.1. In the said case, this Court reduced the compensation on account of delay in handing over possession from 7% p.a. as awarded by the National Commission to 6% p.a. in light of the decision in ***Wing Commander Arifur Rahman Khan*** (supra).

14.4. In the case of ***Ireo Grace Realtech*** (supra), another 3-Judge Bench of this Court dealt with different categories of cases, some relating to delay in offering possession and some relating to such allottees who had been offered alternative units. This Court found such other allottees who had not been offered possession of the units allotted to them to be entitled to refund of the amount deposited by them but their claim for award of compound interest was declined for having no nexus with the commercial realities of the prevailing market. The consideration of this Court in relation to such class of allottees with the relevant observations could be usefully reproduced as under:

> "47. Insofar as the allottees in Chart B are concerned, they have paid part consideration, in most cases up to the 4th instalment till 2017, when they found that there was no progress being made in respect of the Towers in which the apartments had been allotted to them. It is an admitted position that occupation certificate for Towers A1, A2, A3, B7, C9 and C11, in which the allotments have been made for this category has not been issued by the Municipal Corporation. The apartments have not been ready for allotment even as on 30-6-2020, as per the date fixed before RERA Authority.
>
> 48. The allottees submitted that they were facing great hardship since they had obtained loans from banks for purchasing these apartments, and were paying high rates of interest. In 2017, when they realised that there was no construction activity in progress, they were constrained to file consumer complaints before the

National Commission, and then discontinued payment of further instalments.

49. The developer made an alternate offer of allotment of apartments in Phase 1 of the project. The allottees are however not bound to accept the same because of the inordinate delay in completing the construction of the Towers where units were allotted to them. The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project. The allottees have submitted that they have taken loans, and are paying high rates of interest to the tune of 7.9%, etc. to the banks. Consequently, we hold that the allottees in Chart B are entitled to refund of the entire amount deposited by them.

50. Insofar as award of compensation by payment of interest is concerned, Clause 13.4 of the apartment buyer's Agreement provides that the developer shall be liable to pay the allottee compensation calculated @ Rs 7.5 per square foot of the super area for every month of delay, after the end of the grace period. The compensation will be payable only for a period of 12 months. The apartment buyers in their complaint filed before the National Commission made a prayer for refund of the amount deposited along with interest @ 20% p.a. compounding quarterly till its realisation. The apartment buyers, in their submissions have stated that they have obtained home loans on which interest @ 7.90% p.a. is being paid, even as on date.

51. We have considered the rival submissions made by both the parties. The delay compensation specified in the apartment buyer's Agreement of Rs 7.5 per square foot which translates to 0.9% to 1% p.a. on the amount deposited by the apartment buyer cannot be accepted as being adequate compensation for the delay in the construction of the project. At the same time, we cannot accept the claim of the apartment buyers for payment of compound interest @ 20% p.a., which has no nexus with the commercial realities of the prevailing market. We have also taken into consideration that in IREO Grace Realtech (P) Ltd. v. Subodh Pawar [IREO Grace Realtech (P) Ltd. v. Subodh Pawar, 2019 SCC OnLine SC 1937], this Court recorded the statement of the counsel for the developer that the amount would be refunded with interest @ 10% p.a. A similar order was passed in IREO Grace Realtech (P) Ltd. v. Surendra Arora [IREO Grace Realtech (P) Ltd. v. Surendra Arora, 2019 SCC OnLine SC 1943]. However, the order in these cases were passed prior to the outbreak of the pandemic.

52. We are cognizant of the prevailing market conditions as a result of Covid-19 Pandemic, which have greatly impacted the construction industry. In these circumstances, it is necessary to balance the competing interest of both parties. We think it would be in the interests of justice and fairplay that the amounts deposited by the apartment buyers is refunded with interest @ 9% SI p.a. from 27-11-2018 till the date of payment of the entire amount. The refund will be paid within a period of three months from the date of this judgment. If there is any further delay, the developer will be liable to pay default interest @ 12% SI p.a.

53. The developer shall not deduct the earnest money of 20% from the principal amount, or any other amount as mentioned in Clause 21.3 of the Agreement, on account of the various defaults committed by the developer, including the delay of over 7 months in obtaining the fire NOC."

14.5. The case of ***NBCC (India) Ltd.*** (supra) was directly a case of delayed delivery of possession and therein, this Court awarded simple interest @ 7% p.a. for the default period and did not approve of awarding any additional amount towards compensation. This Court, *inter alia*, said as under: -

"**13.** As regards, the date on which interest would become payable, having regard to the one-year period which is stipulated, beyond two and a half years from the original period under Clause 20, interest would become payable from 1-1-2016. Secondly, insofar as the rate of interest is concerned, the interest should be fixed at 7% p.a. instead and in place of 10% which has been awarded by NCDRC. Interest @ 10% is excessive, in light of prevailing market conditions. [*Central Bank of India* v. *Ravindra*, (2002) 1 SCC 367, SCC para 39.]

14. NCDRC has, in addition to the award of interest, granted compensation of Rs 2,00,000 for loss of rent. Once NCDRC awarded interest for the delayed handing over of possession, there would be no justification to award an additional amount of Rs 2,00,000."

14.6. In the case of ***Experion Developers Pvt. Ltd.*** (supra), another 3-Judge Bench of this Court dealt with a case where the developer did not offer possession within the period stipulated in the agreement and the

complainant sought refund of the total consideration of Rs. 2,06,41,379/- with interest at the rate of 24% p.a. The reasons given by the developer for delay in handing over the possession was non-availability of occupation certificate and it was pointed out that after securing occupation certificate on 23.07.2018, notice of possession was issued to the consumers on 24.07.2018. It was, therefore, claimed that possession could be handed over and the complaint ought to be dismissed. The National Commission allowed the complaint and directed the developer to refund the deposited amount with interest @ 9% p.a. In the given context, this Court examined the other decisions of this Court as also the contentions concerning the provisions of the Real Estate (Regulation and Development Act), 2016 and held that the Commission has the power and jurisdiction to direct return of money under Section 14 of the Act of 1986 if the consumer so chooses. The order of the National Commission was approved by this Court with the following observations: -

> "**28.** The Consumer in present case prayed for the solitary relief for return of the amount paid towards purchase of the apartment without a prayer for alternate relief. Recognizing the right of the Consumer for return of the amount with interest and compensation, the Commission passed an order directing the Developer as under:
>
> > *"The opposite party shall refund an amount of Rs. 2,06,41,379/- paid by the complainant along with interest @ 9% p.a. from the date of last deposit before the due date of possession till actual payment on the amount paid before due date of possession and after this date if any amount is deposited, then from the date of deposit till actual payment."*

> **29.** For the reasons stated above, we are of the opinion that the Commission has correctly exercises its power and jurisdiction in passing the above directions for refund of the amount with interest."

14.7. A look at the decisions aforesaid makes it clear that though in most of the cases, the questions were relating to the compensation for delayed delivery of possession but even in the cases where possession was not being delivered by the builder or not being taken by the purchaser for a valid reason, the award of compensation was restricted to the refund with simple interest in the range 6% to 9% p.a. The claim for awarding compound interest, as in the case of ***Ireo Grace Realtech (P) Ltd.*** (supra), was declined by this Court while observing that it had '*no nexus with the commercial realities of the prevailing market*'.

<u>The decision in Manjeet Kaur Monga's Case and its connotations</u>

15. We may now closely examine the decision of this Court in ***Dr. Manjeet Kaur Monga's*** case that has been the sheet anchor of the entire consideration of the State Commission as also the National Commission in awarding compensation in terms of compound interest. The said decision has been strongly relied upon by the respondent while the appellant has attempted to distinguish the same. Having regard to the importance of the questions involved and for clarity on all the relevant aspects, we deem it appropriate to reproduce the entire judgment of this Court in ***Dr. Manjeet Kaur Monga*** with its extractions (even at the cost of a little extra length of this judgment) as under: -

“Leave granted in SLPs (C) Nos. 10484-85 of 2016 and 10481-82 of 2016.

2. The appellant in Civil Appeals Nos. 5032-33 of 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 *Manjeet Kaur Monga* v. *K.L. Suneja* [*Manjeet Kaur Monga* v. *K.L. Suneja*, 2015 SCC OnLine Comp AT 593], paras 37 and 42 to 44 of the impugned order read as follows: (SCC OnLine Comp AT)

> “*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 instalments including the booking amount. The complainant, Dr (Ms) Manjeet Kaur Monga deposited three other instalments (total Rs 4,53,850). She did not deposit further instalments 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 22-5-2002 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 complainant was justified in not paying further instalments of price and the respondents committed grave illegality by cancelling the allotment.
>
> * * *
>
> *42*. In my view, even though the Tribunal cannot, in view of the law laid down in *Ved Prakash Aggarwal case* [*Ghaziabad Development Authority* v. *Ved Prakash Aggarwal*, (2008) 7 SCC 686], 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 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 utilised the same. She could not do so during her lifetime and her

legal representatives have been 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 instalments. The respondents not only failed to complete the project within the stipulated time but also failed to return the instalments 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 7-9-2005.

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 instalments deposited by Smt Gursharan Kaur and the complainant totalling 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.

44. Accordingly, UTPE No. 90 of 2005 and CA No. 39 of 2009 are disposed of in the following terms:

(*i*) It is declared that the respondents have acted in violation of Sections 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,

(*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 30-4-2005 i.e. the date on which the allotment was cancelled, and

(*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.”

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 30-4-2005.

4. It is the contention of the respondents, who have filed separate appeals arising from SLPs (C) Nos. 10484-85 of 2016 and SLPs (C) Nos. 10481-82 of 2016, that the company and the director have no liability to pay the compound interest even assuming that the appellant in Civil Appeals Nos. 5032-33 of 2016 is entitled to any compensation. It can be only the amount determined under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short “the Act”). Section 12-B reads as follows:

> “12-B. *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 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 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 and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of Rule 8 of Order 1 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 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 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.

(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."

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 [*Manjeet Kaur Monga* v. *K.L. Suneja*, 2015 SCC OnLine Comp AT 593] 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 12-B of the Act.

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 SLPs (C) Nos. 10484-85 of 2016, had taken the pay order from Citibank on 30-4-2005, 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 Citibank has re-credited the amount to the account only on 22-6-2016. 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 Appeals Nos. 5032-33 of 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 CPC and on the general principle of restitution, the builder cannot be put to unmerited injustice and the appellant should not take the undue advantage as held by this Court in *Citibank N.A.* v. *Hiten P. Dalal* [*Citibank N.A.* v. *Hiten P. Dalal*, (2016) 1 SCC 411 : (2016) 1 SCC (Civ) 342] , as canvassed by the learned counsel appearing for the builder.

7. The 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 30-4-2005 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 Reserve Bank of India in that regard.

8. We find from the order [*Manjeet Kaur Monga* v. *K.L. Suneja*, 2015 SCC OnLine Comp AT 593] of the Tribunal that both the issues have not been gone into, apparently because these aspects have not been canvassed and obviously because 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:

9.1. 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.

9.2. The builder shall pay the compensation worked @ 15% compound interest up to 30-4-2005.

9.3. Whether there should be any compensation and if so, what should be the amount payable after 30-4-2005 and whether 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.

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.
>
> 13. Pending applications, if any, shall stand disposed of. There shall be no orders as to costs."

15.1. The observations and directions in paragraphs 6 to 11 in the aforesaid decision led to another round of litigation that culminated in the other decision of this Court in ***K.L Suneja*** (supra) wherein, ultimately, this Court declined any interest to the complainant after tender of the amount by the developer. In the given context, this Court observed, *inter alia*, as under: -

> "**31.** The provisions of Order XXI are applicable to decrees of civil court. However, they embody a sound policy principle, that if the amount is deposited, or paid to the decree holder or person entitled to it, the person entitled to the amount cannot later seek interest on it. This is a rule of prudence, inasmuch as the debtor, or person required to pay or refund the amount, is under an obligation to ensure that the amount payable is placed at the disposal of the person entitled to receive it. Once that is complete (in the form of payment, through different modes, including tendering a Banker's Cheque, or Pay Order or Demand Draft, all of which require the account holder/debtor to pay the bank, which would then issue the instrument) the tender, or 'payment' is complete.
>
> **32.** In the present case, the complainant was aware that the Pay Order had been tendered by the developer to her; nevertheless she filed the *original* Pay Order with her complaint, and did not seek any order from the MRTP Commission at the relevant time. The pleadings in the complaint did not disclose that the Pay Order was filed in the Commission, to enable the developer to respond appropriately. In these circumstances, the developer's argument that the rule embodied in Order XXI, Rule 4 CPC, is applicable, is merited. The developer cannot be fastened with any legal liability to pay interest on the sum of Rs. 4,53,750/- after 30th April 2005.
>
> **33.** This court is also of the opinion that the complainant's argument that on account of the omission of the developer, she was wronged, and was thus entitled to receive interest, cannot prevail. The records nowhere disclose any fault on the part of the

developer; on the other hand, the complainant did not take steps to protect her interests. It has been held by this court, in *Sailen Krishna Majumdar* v. *Malik Labhu Masih* [Sailen Krishna Majumdar v. Malik Labhu Masih, (1989) 1 SCR 817] that in such cases, even if equities are equal, the court should not intervene:

> *"Equity is being claimed by both the parties. Under the circumstances we have no other alternative but to let the loss lie where it falls. As the maxim is, 'in aequali jure melior est conditio possidentis'. Where the equities are equal, the law should prevail. The respondent's right to purchase must, therefore, prevail."*

34. In the present case too, the complainant cannot claim interest from the developer, who had returned the Pay Order. As discussed, at the time of filing of the complaint, she could have chosen one among the various options to ensure that the amount presented to her was kept in an interest-bearing account, without prejudice to her rights to claim interest later. In these circumstances, no equities can be extended to her aid.

35. As regards the complainant's appeal, the contention is that the impugned order is in error, because the Tribunal ought to have directed that the developer ought to have been directed to pay interest on the sum of Rs. 4,53,750/- from 4th October 1993 till the date of its realization i.e., 7th May 2016. This plea is plainly untenable, because the interest payable for the past period was concluded in the previous proceedings. The complainant did not point to any rule or binding legal principle which obliged the developer to pay such interest, or justify the direction in the impugned order, by showing how such liability arose in the facts and circumstances of this case."

15.2. The said case of ***Dr. Manjeet Kaur Monga*** had been of claiming compensation under the provisions of MRTP Act whereas the present one is a case of claiming compensation under the Consumer Protection Act, 1986. Hence, a comparison of the provisions of Section 14(1)(d) of the Act of 1986 and Section 12-B(3) of MRTP Act, as regards powers of respective fora, shall be apposite and could be made as under:-

Section 14(1)(d) of the Consumer Protection Act, 1986	Section 12-B(3) of the MRTP Act
To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the Opposite Party. Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;[8]	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 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.

16. The question is as to whether the aforesaid decision in ***Dr. Manjeet Kaur Monga*** could be read as laying down a principle of universal applicability that in such matters of dealing in real estate, the question of compensation or damages could be determined invariably by awarding compound interest whenever the deposited money is to be returned by the builder or developer in case of default in carrying out its obligations under the agreement and in failing to deliver the property

[8] The proviso aforesaid was inserted by Act 62 of 2002 with effect from 15.03.2003

envisaged by the agreement. In our view, the answer could only be in the negative.

16.1. It is at once clear on a bare look at the aforesaid decision of this Court in ***Dr. Manjeet Kaur Monga*** that therein, the Competition Appellate Tribunal, while exercising powers under Section 12-B of the MRTP Act, directed the builder to pay compound interest at rate of 15% p.a. from the date of deposit and until the date on which allotment was cancelled. There were cross appeals in this Court. The complainant in her appeals questioned the award of compound interest only until the date of cancellation and sought the same until the date of payment. On the other hand, the builders, that is, the present appellants, contended that they could not be made liable to pay compound interest because even if the complainant was entitled to any compensation, it could only be that of the amount determined under Section 12-B MRTP Act. In this background and in regard to such contentions of the present appellants, this Court observed that there was no need for any interpretation of the meaning of the term “compensation” because once the amount of interest as ordered by COMPAT was calculated, that would be the compensation referred to under Section 12-B of the MRTP Act; and merely because liquidated amount was not stipulated or determined by COMPAT, it could not be said that the awarded amount was not that of compensation. This all was said by this Court, as could be noticed from paragraph 5 in the extraction

aforesaid. In the subsequent passages, this Court adverted to another peculiar feature of this case where the amount of pay order, despite being deducted from current account of appellants, did not reach the payee and re-credit was allowed by the bank more than 11 years later; and as the bank was not a party to the litigation, the said aspect was remitted for consideration of COMPAT.

16.2. In the aforesaid decision in ***Dr. Manjeet Kaur Monga*** by this Court, the question was not raised as to whether compound interest could be granted as a measure of compensation nor this Court decided so. The question raised had been the other way round that COMPAT had not specified the amount of compensation payable, to which, this Court observed that calculating the amount as per directions of COMPAT would lead to the quantum of compensation.

17. What has been argued before us on behalf of respondent is essentially on the basis of the relief granted by COMPAT to the said complainant ***Dr. Manjeet Kaur Monga,*** which was not interfered with by this Court. That aspect, in our view, only relates to the conclusion of the decision and not to its *ratio decidendi*.

17.1. It has rightly been argued on behalf of the appellants that a judgment is an authority only in regard to its ratio which is required to be discerned; and a decision cannot be regarded as an authority in regard to its conclusion alone or even in relation to what could be deduced

therefrom. In ***Sanjay Singh*** (supra), a 3-Judge Bench of this Court has explained these principles in clear terms as follows: -

> "10. The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent."

18. Keeping the principles aforesaid in view and for what has been discussed hereinbefore in regard to *ratio decidendi* of the decision in ***Dr. Manjeet Kaur Monga,*** it is but clear that the said decision cannot be read in support of the principle that compensation and/or punitive damages in terms of the Act of 1986 could also be by way of compound interest. As noticed, the State Commission has awarded compound interest, and National Commission has approved such awarding of compound interest to the present respondent, only with reference to the said decision in the case of ***Dr. Monga***. When we do not find *ratio decidendi* of ***Dr. Monga*** leading to the enunciation in favour of awarding compensation and/or punitive damages by way of compound interest, the substratum of the orders impugned is knocked to the ground.

The complexities of present matter requiring further exploration

19. However, the complexities of the present matter are that even the observations and conclusions foregoing cannot be taken as decisive of the matter. It is because of the other pertinent factors that in ***Dr. Monga's*** case, compound interest was indeed awarded against the very same builders in relation to the very same project. The respondent asserts to be identically situated and rather having suffered excessive losses for a longer period of time. The respondent has been awarded compound interest at rate of 14%. The frequency of compounding has not been specified but, we may take it as that of yearly rests. In the circumstances, the question to be addressed is as to whether compound interest could have been allowed in this case under the Act of 1986 and if so, until which date and for what period. Therefore, a little further exploration is requisite.

20. The submissions on behalf of the appellants that wherever the legislature considered it permissible to award compound interest it has provided so in the enactment, has its own limitations. The illustrations placed before this Court by the learned counsel for the appellants concerning different enactments, though make it clear that in certain eventualities, the legislature has indeed specified the award of compound interest. Mostly, it has been provided so in relation to any monetary involvement having the trappings of public interests in it. The Act of 1986,

on the other hand, being a beneficial legislation, *inter alia*, empowers the Consumer Fora to direct payment of such amount as may be awarded as compensation to the consumer for any loss or injury suffered due to the negligence of the opposite party. The proviso added to Clause (d) of Section 14(1) of the Act of 1986 empowers the Forum to grant punitive damages in such circumstances as it deems fit. That being the position, it cannot be laid down in absolute terms that for no such stipulation regarding compound interest being available in the Act of 1986, the same can never be granted by the Consumer Fora. Equally, when the matter is being considered for award of compensation and/or punitive damages, want of stipulation in the contract as regards award of compound or simple interest, cannot be decisive of the matter.

20.1. In the case of ***Clariant International Ltd.*** (supra), the Court was considering the power of Securities & Exchange Board of India to direct payment of compensation and interest to the shareholders of the target company because of delay in or failure to make public offer after takeover. This Court, *inter alia*, held that in the absence of any agreement or statutory provision or mercantile usage, interest payable could only be at the market rate; and the interest could be payable upon establishing totality of circumstances justifying exercise of such equitable jurisdiction. This Court, *inter alia*, observed and held as under: -

> "**30.** Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade

having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.

31. In absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. (See *Municipal Corpn. of Delhi* v. *Sushila Devi* [(1999) 4 SCC 317] , SCC para 16.)

32. In *Executive Engineer, Dhenkanal Minor Irrigation Division* v. *N.C. Budharaj* [(2001) 2 SCC 721] Raju, J. speaking for the majority held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, namely, interest, compensation or damages."

20.2. In the case of ***Central Bank of India*** (supra), the Constitution Bench of this Court essentially dealt with the question as to the meaning to be assigned to the phrases "the principal sum adjudged" and "such principal sum", as occurring in Section 34 of the Code of Civil Procedure, 1908. The Constitution Bench answered the reference in the following terms: -

"**58.** Subject to the above we answer the reference in the following terms:

(*1*) Subject to a binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage interest on loans and advances may be charged on periodical rests and also capitalised on remaining unpaid. The principal sum actually advanced coupled with the interest on periodical rests so capitalised is capable of being adjudged as principal sum on the date of the suit.

(*2*) The principal sum so adjudged is "such principal sum" within the meaning of Section 34 of the Code of Civil Procedure, 1908 on which interest pendente lite and future interest i.e. post-decree interest, at such rate and for such period which the court may deem fit, may be awarded by the court."

20.2.1. The said case, essentially on enunciation of the principles relating to charge of interest by a creditor with reference to stipulation in the contract, or by a practice or usage when established, subject to the statutory provision, does not have an application to the question at hand.

21. On the other hand, the observations made by this Court in the case of ***Indian Council for Enviro-Legal Action*** (supra), which have been extensively relied upon by the learned counsel for the respondent cannot as such be applied to the case at hand either. In the said case, this Court dealt with the principles governing compensation for the loss suffered by citizenry due to pollution and the 'polluter pays' principle. Such observations, essentially relating to public law remedies under inherent powers of this Court, are difficult to be applied to the case of the present nature, essentially emanating from the allegations of breach of contract. In other words, the observations of this Court as regards disgorgement of all the benefits arrived at by the wrongdoer and restitution in full and effective form are difficult to be directly applied to the nature of claim in the present case. The set up and background in which the Court made the observations could be noticed from paragraph 169 of the said decision that reads as under: -

> "**169.** In the point under consideration, which does not arise from a suit for recovery under the Code of Civil Procedure, the inherent powers in the court and the principles of justice and equity are each sufficient to enable an order directing payment of compound interest. The power to order compound interest as part of

restitution cannot be disputed, otherwise there can never be restitution."

21.1. A few other referred paragraphs of the said decision may also be reproduced, which read as under: -

> "**177.** This Court in *Alok Shanker Pandey* v. *Union of India* [(2007) 3 SCC 545] observed as under: (SCC p. 547, paras 8 and 9)
>
> > "*8*. We are of the opinion that there is no hard-and-fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount, the respondent should then in addition to the interest at the rate of 12% per annum also pay to the appellant, interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.
> >
> > *9*. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital."
>
> **178.** To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above—or to simply levelise—a convenient approach is calculating interest. But here interest has to be calculated on compound basis—and not simple—for the latter leaves much uncalled for benefits in the hands of the wrongdoer.
>
> **179.** Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.
>
> **180.** Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice. However, the power of the Court to order compound interest by way of restitution is not fettered in any way.

We request the Law Commission to consider and recommend necessary amendments in relevant laws."

21.2. The observations aforesaid, as occurring in the referred decision in the case of ***Alok Shankar Pandey*** (supra) make it clear that there could be no hard and fast rule as to how much interest should be granted and it would depend on the facts and circumstances of each case. However, interest is not considered to be a penalty or punishment but is considered to be a normal accretion on capital.

21.3. The decision of English Courts cannot be taken as instructive in view of the principles available in the decisions of this Court and the entirely different socio-economic factors. Hence, we do not propose to dilate on the decision in the case of ***Wallersteiner*** (supra) as cited by the learned counsel for the respondent but, this much is apparent from the said decision too that in the absence of statutory provisions, the principles of equity have been invoked for awarding interest.

22. The synthesis of the cited decisions aforesaid, for the present purpose, leads to the result that none of these decisions could be taken as guide for award of compound interest in an action before the Consumer Fora under the Act of 1986. In regard to such cases, in our view, the forum would be entitled to provide for the amount of compensation as deemed fit, having regard to the facts and circumstances of the case and the gravity of the negligence of the opposite party and consequential injury suffered by the consumer. The

forum could award even punitive damages but that would depend on the relevant circumstances and for that matter, the relevant factors shall have to be specified. In regard to such awarding of compensation and/or punitive damages, the forum concerned could take all the relevant factors into account and award such amount as deemed fit and necessary but ordinarily, in the matters of money refund, awarding of compound interest as a measure of punitive damages is not envisaged. As to what would be the quantum of compensation and for that matter, what would be the quantum of punitive damages, would depend on facts and circumstances of each case but while awarding so, the forum would be advised to specify all the relevant factors and basis of its quantification. A shortcut of awarding compound interest is neither envisaged by the statute nor do we find any such term of contract between the parties or any such usage. As noticed, the attempt to seek compound interest in such real estate dealings did not meet with approval of this Court and in the case of ***Ireo Grace Realtech*** (supra) such a claim was declined by a 3-Judge Bench of this Court for having no nexus with the commercial realities of the prevailing market. Going by the principles governing the nature of jurisdiction of the Consumer Fora as also the principles enunciated by this Court including those in the 3-Judge Bench decision, we need to disapprove the proposition of

awarding compound interest in the cases of monetary refund in such dealings.

23. Several submissions made on behalf of the respondent as to the alleged advantage derived by the appellants by retention of money, again, cannot lead to award of compound interest while ordering refund. For award of compound interest, relevant factors shall have to be taken into account which would include uncertainties of market and several other imponderables. We would hasten to observe that if at all by way of compensation, the Consumer Forum considers it proper to examine the time value for money, an in-depth and thorough analysis would be required while taking into account all the facts and the material surrounding factors, including those of realities as also uncertainties of market.

24. In our view, awarding of compound interest with reference to ***Dr. Monga's*** case and without examining any other factor has led to serious inconsistencies; and if the award as made is approved, it could only lead to unjust enrichment of the respondent in the name of disgorgement of benefits purportedly derived by the appellants. As noticed, the State Commission and the National Commission have passed rather assumptive orders on the basis of the decision in ***Dr. Monga*** that compound interest was required to be allowed. Various factors recounted on behalf of the respondent, including excessive

harassment and denial of the fruits of her investment could all lead to a reasonable amount of compensation but, there appears absolutely no reason that compound interest be allowed in this matter.

25. Having regard to the order proposed to be passed, we are not entering into the minute calculations and variety of alternatives presented by the parties before us but, on a broad consideration of the matter, it is clear that even as per the exemplar sale deeds relating to the same area and similar flats, the cost of 3 flats booked by the respondent, as at present, is in the range of 2.25 crore, whereas the amount payable under the award in question would be above Rs. 7.35 crore. The respondent has attempted to compare the circle rates of the land in the area in question with the submissions that there were no circle rates of the flats in the year 1989 and the attempt on her part was to make “apples-to-apples” comparison and then factorising on the cost of flats. In the first place, no such efforts of calculation and assessment were made before the State Commission or the National Commission by the respondent. Secondly, the said Consumer Fora have not returned cogent and convincing findings on the loss or injury of the respondent with reference to the relevant factors. We have referred to these aspects only to indicate that award of compound interest in the present case had neither any foundation in the record nor any backing in law nor the Consumer Fora took care to examine the contours of their

jurisdiction and the requirements of proper assessment, if at all any compensation and/or punitive damages were sought to be granted. The impugned orders are difficult to be sustained.

26. Even while we have disapproved the award of compound interest by the Consumer Fora in the cases of the present nature, there is yet another factor for which the impugned orders are required to be interfered with. As noticed, the State Commission merely referred to the decision of COMPAT in ***Dr. Monga's*** case and then referred to the prayer of the respondent for award of compound interest coupled with the fact that possession cannot be handed over to her. On this and with reference to the observations in the case of ***Malay Kumar Ganguly*** (supra)[9], for awarding compensation with such sum of money as to put the wronged person in the position as he would have been if he had not sustained the wrong, the State Commission straightaway jumped to the conclusion of awarding compound interest @ 14%. Apart from other shortcomings as noticed above, the State Commission, even while awarding compound interest @ 14%, did not even take into account the

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[9] ***Malay Kumar Ganguly*** had been a case relating to compensation on account of medical negligence. The referred passage in the said decision reads as under: -

> "Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitution in interregnum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong."

fact of attempted refund of money by the appellants by the cheque dated 08.11.2005 and did not specify the period of such operation of compounding of interest. The open-ended and the assumptive order by the State Commission had been bereft of logic and had been wanting in the requisite reasoning as also specification of the relief sought to be granted. The position in the National Commission had been no better and in fact, the Commissions proceeded as if nothing else was required to be considered because of ***Dr. Manjeet Kaur Monga's*** case.

In extraordinary measure, money received by respondent allowed to be retained

27. For what has been discussed hereinabove, the impugned orders are required to be set aside. However, as indicated, the pertinent factors are that ***Dr. Monga's*** case related to the very same project and very same builder with similar grievance of the complainant. In the said case, award of compound interest until the date of attempted refund by the builders has attained finality. In this view of the matter, even while disapproving the proposition of providing compound interest as such, we deem it appropriate to take into consideration, only for the purpose of the present case, the other requirements of balancing the equities.

27.1. For the peculiar factors of the present case, we are inclined to examine the matter with reference to the alternative submission on the part of the appellants that if at all awarding of compound interest was to

be considered, their efforts to make refund of the sum of Rs. 10,68,031/- on 08.11.2005 by way of a cheque cannot be ignored. It has been argued in this regard on behalf of the respondent that the said cheque was promptly returned by the respondent and accepted by the appellants. Such return of cheque by the respondent and acceptance by the appellants is not decisive of the matter. The relevant aspect of the matter is that the appellants indeed attempted to refund the said sum of Rs. 10,68,031/- on 08.11.2005. Even if the respondent was within her right to decline the offer, in our view, if at all compounding of interest was to be allowed, that could not have run beyond 08.11.2005, at least in regard to the said sum of Rs. 10,68,031/-. Put in other words, even when we may not find fault with stance of the respondent in refusing to accept such an offer of refund, particularly when she was desirous of the flats rather than money refund, the appellants cannot be saddled with any liability to pay compound interest over the amount offered by them beyond the date of their offer. The Consumer Fora have failed to consider that when the appellants had indeed offered to pay the money and sent the cheque on 08.11.2005, it would be bringing about negative imbalance if such an effort on the part of the appellants was to be ignored altogether and compounding of interest was continued beyond 08.11.2005.

27.2. When the amount payable by the appellants with reference to the principles and propositions aforesaid is calculated, in our view, it does not

exceed the amount of Rs. 2,48,52,000/- together with accrued interest, which has already been received by the respondent pursuant to the order passed by this Court on 09.05.2022. Keeping in view the peculiar circumstances of this case, as an extraordinary measure, we propose to allow the respondent to retain the amount so received.

27.3. However, we would hasten to observe that the respondent is being allowed to retain the sum of money already received by her only because of peculiar circumstances of this case and else, this relaxation for the respondent is in no manner to be read as approval of the orders impugned or approval of the proposition of awarding compound interest in these matters. As said and iterated hereinbefore, such a proposition of awarding compound interest in these matters by the Fora exercising jurisdiction under the Act of 1986 stands disapproved.

Conclusion

28. Accordingly and in view of the above, these appeals succeed and are allowed. The impugned orders passed by the State Commission and National Commission are disapproved. Having regard to the peculiar circumstances of this case, the amount already received by the respondent in the sum of Rs. 2,48,52,000/- together with accrued interest is allowed to be retained by her but, we make it clear that the appellants shall not be required to make any further payment to the respondent,

whether towards refund or towards compensation or towards interest. The parties are left to bear their own costs of these appeals.

……....……………………. J.
(DINESH MAHESHWARI)

……....……………………. J.
(SANJAY KUMAR)

NEW DELHI;
APRIL 18, 2023.