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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 16935/2022

NEW WORLD REALTY LLP .....Petitioner

Through: Mr. Ajitesh Dayal Singh, Advocate

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Zoheb Hossain & Mr. Vivek Gurnani, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **10.07.2024**

CM APPL. 33762/2024 (direction)

1. The instant application has been moved with a prayer for appropriate directions being framed for the Registry to refund the amount deposited by the petitioner amounting to INR 1,29,71,646/-.

2. We note that the said deposit was made pursuant to interim directions which came to be framed by the Court vide order dated 15 December 2022 and which reads as:

> "Keeping in view the orders passed by this Court in ***Phillips India Limited Vs. Union of India & Ors. [W.P.(C) No.3737/2020]*** as well as ***M/s Samsonite South Asia Pvt. Ltd. Vs. Union of India & Ors. [W.P.(C) No. 4131/2020]*** and ***M/s Patanjali Ayurved Ltd. Vs. Union of India & Ors. [W.P.(C) No.4375/2020]***, this Court directs the Petitioner to deposit the principal profiteered amount of Rs.1,29,71,647/- (Rs.1,45,28,245/- minus Rs.15,56,598/- being the GST imposed which has already been deposited) in six equated installments commencing 01st January, 2023. Upon deposit of the said amount, the directions to pay interest as well as further investigation are stayed."

3. When judgment was finally rendered on 29 January 2024 with the Court negating the constitutional challenge to the validity of the

anti-profiteering provisions, it had in so far as the real estate sector, and which included the writ petitioners was concerned, had held as follows:-

> "**129**. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account."

4. Presently, the exercise of determination and quantification is yet to be completed.

5. In view of the aforesaid and subject to the conclusion of the aforesaid exercise, we direct the Registry to refund the amount which is held in deposit to the applicant subject to due verification.

6. Application stands disposed of.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 10, 2024/*sk*