

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999

In the matter of Arise Bhoomi Developers Limited

In respect of:

1. Arise Bhoomi Developers Limited [PAN: AAICA5915H),
2. Mr. Papu Kumar Singh [PAN: BFBPS2869N],
3. Mr. Ravi Shankar Singh [PAN: BGMP55091L] and
4. Mr. Ratnesh Kumar Yadav [PAN: ACHPY6664K]

Date of Hearing: January 15, 2016

Appearances:

Mr. Subodh Gupta, Advocate appeared for the Company; Ms. Purnima Gupta, Advocate appeared for Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav.

For SEBI: Dr. Anitha Anoop, General Manager; Mr. Pradeep Kumar, Assistant General Manager and Mr. Ankit Bhansali, Assistant General Manager.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide *ex-parte interim* Order dated December 02, 2014 (hereinafter referred to as 'the *interim* order'), *prima facie* observed that **Arise Bhoomi Developers Limited** (hereinafter referred to as 'the Company' or 'Arise') is engaged in fund mobilization activities from the public, which falls within the ambit of Collective Investment Scheme (hereinafter referred to as 'CIS') in terms of Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). It was alleged that the Company did not obtain a certificate of registration as required under Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations') prior to the launch and operation of such schemes. The Company was also alleged to have contravened Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

2. The *interim* order was issued in order to protect the interest of investors, to ensure that the Company and its directors do not collect further funds under its schemes/ plans and to safeguard the assets/ acquired by Arise and its directors from the funds of the investing public. This Order directed Arise and its directors, namely, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav (hereinafter collectively referred to as 'noticees'):

“...

- *not to collect any fresh money from investors under its existing scheme;*
- *not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- *to immediately submit the full inventory of the assets obtained through money raised by ABDL;*
- *not to dispose of or alienate any of the properties/ assets obtained directly or indirectly through money raised by ABDL;*
- *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of ABDLL or group companies or promoters or LLPs or Proprietary concerns or any person directly or indirectly controlled through shareholding or management by ABDL ;*
- *to furnish all the information/ details sought by SEBI vide letters dated September 26, 2013, February 21, 2014 and July 03, 2014 within 15 days from the date of receipt of this order;*
- *to furnish the PAN of the aforementioned Directors.”*

3. The aforesaid directions came into force with immediate effect and the noticees were advised to file their reply within a period of twenty one (21) days from the date of receipt of the *interim* order and also seek an opportunity of personal hearing.
4. The *interim* order was forwarded to the Company and its directors vide letters dated December 02, 2014. The Company had refused to accept the said letter of SEBI. Letters issued to other noticees had also returned undelivered. In the meantime, SEBI came to know that the directors of Arise are also directors in one Arise Multitrade Services Pvt. Limited. Therefore, the copy of the *interim* order was forwarded to Arise Multitrade Services Pvt. Limited vide letter dated August 27, 2015, for onward delivery to the noticees. This letter of SEBI was duly served on Arise Multitrade Services Pvt. Limited. The *interim* order was also hand delivered at the addresses available at the MCA website for Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav. Before proceeding further, SEBI intimated the passing of the *interim* order vide public notice in the newspapers namely ‘Times of India’ and ‘Dainik Jagran’ on September 26, 2015.

5. In response, the noticees vide common letter dated September 28, 2015, replied to SEBI and intimated the appointment of the authorized person namely Mr. Subodh Kumar Gupta, Advocate to receive the *interim* order on behalf of the Company and its directors. SEBI vide letter dated September 29, 2015, provided the copy of the *interim* order to the noticees. Thereafter, the Company vide its letter received by SEBI on October 15, 2015, submitted that it has stopped all its operations and is arranging to collect the additional information as sought in the *interim* order. Vide the said letter, the Company requested for ninety days' time for submitting the complete information. Thereafter, the Company vide its letter dated November 10, 2015 submitted that it had received a summon from Economic Offence Wing (EOW), Thane Rural requiring presence along with all the papers relating to the Company. In compliance, the advocate of the Company namely Mr. Subodh Gupta presented himself and submitted certain documents to EOW. From there, the advocate came to know that the enquiry is being conducted on the basis of the letter of SEBI dated July 20, 2015 to EOW. The Company has submitted that SEBI has not submitted the complete correspondence with the Company to EOW. The Company vide this letter also alleged that by directing EOW for taking necessary action and not replying to the letter of the Company, SEBI is not allowing the Company to work smoothly. The Company also stated that it is not involved in any CIS and requested to forward the material on which allegations have been levelled against the Company. Further, it was stated that the Company is fully co-operating in the enquiry and there is no need to direct EOW to enquire into the matter as the same was necessary only when the Company would not co-operate. Vide another letter dated November 26, 2015, the Company reiterated its earlier submissions and requested to take a decision on its letter dated November 09, 2015 (*sic*).
6. Before proceeding further, an opportunity of personal hearing was afforded to the noticees on January 15, 2016 and the same was communicated to the noticees vide e-mail dated December 16, 2015. In the meantime, the Company vide its letter dated January 06, 2016, requested for the copy of the complaint, evidences, affidavits, investigation report and other material available on record. Thereafter, on the date fixed Mr. Subodh Gupta, Advocate appeared for the Company and Ms. Purnima Gupta, Advocate appeared for the directors of the Company and requested for the

copies of the documents as sought vide letter dated January 06, 2016. The request of the representatives of the noticees was considered and SEBI was directed to provide copy of all the relied upon documents. The noticees were also directed to reply to the *interim* order within 10 days of receipt of such documents. The representatives were further asked to make submissions on merits and it was clarified that no further opportunity of personal hearing will be granted in the matter. Upon this the representatives submitted that they will be submitting the written reply and require no further hearing.

7. SEBI also received two letters both dated January 15, 2016, requesting for the copy of the complaint. Thereafter, SEBI vide its letter dated February 09, 2016, provided the documents as sought by the noticees. In the meantime, the Company vide its letter dated February 06, 2016, again reiterated its request made vide letters dated January 15, 2016.
8. The letter providing the documents to the Company dated February 09, 2016, addressed to the Head Office of the Company (i.e. B-002, Mercury C.H.S., Poonam Sagar Complex, Mira Road (E), Thane – 401107, Maharashtra) was returned undelivered with the remark '*left*'. The said address was mentioned in the communications to SEBI including the letters dated January 15, 2016. SEBI vide its e-mail dated February 24, 2016, asked the Company to provide the correct/ alternate address or collect the documents from SEBI. As no reply was received from the Company, SEBI vide another e-mail dated February 29, 2016, reminded the Company to provide an alternate address. In reply, the Company vide its e-mail dated February 29, 2016, provided the address (i.e. Unit No. 107, Subh Industrial Estate, Chinchpada, Vasai Road, Thane – 401204). Thereafter, SEBI vide its letter dated March 03, 2015, forwarded the documents as sought by the noticees on the new address and asked it to submit the reply latest before March 14, 2016.

The Company vide its letter dated March 31, 2016, while requesting for evidence with regard to the complaint, statement, affidavit, investigation report requested for 40-45 days for submitting the reply. The request of the Company was considered and time till April 20, 2016 was granted for submitting the reply.

The Company vide its letter dated April 13, 2016, submitted that the complainant had approached it before making complaint and had threatened it. It was also said that the complainant for no reason has included the name of the Company along with other companies and SEBI while relying on the same has presumed that the Company is conducting CIS. Vide another letter dated April 18, 2016, the Company requested for further fifteen days' time. Later, the Company vide its letter dated May 06, 2016, submitted the reply/ written submissions along with certain sale deeds of land purchased by the Company and copies of registration of land allotted to the customers.

9. The submissions of the Company made vide letter dated May 06, 2016, in brief, are as under:
- a. The Company was incorporated on June 10, 2010 and it is into the business of real estate and property development. As the Company has not operated a CIS, therefore, it did not feel the need to obtain certificate of registration from SEBI.
 - b. The plans as detailed in the *interim* order were prepared but these were never implemented. The Company has carried out a legitimate investment activity and none of its customers are defrauded/ cheated. Further, none of its customers have filed any complaint against the Company.
 - c. The Company has not pooled and utilized the money for the purpose of the schemes. The Company had first purchased the land and then started accepting booking amount and allotted land. The Company had taken money from the customer against the development of the land, which would be allotted and registered in respective names as soon as the total amount is received by the Company.
 - d. The Company has not accepted any investment from its customers on account of the promise of any annual return. The customers who did not require the land were paid back the booking amounts.
 - e. The Company was preparing the information as required by SEBI, however, the same took time to gather all the details. By the time it could submit the details, SEBI had passed the *interim* order. The Company has now submitted all the documents available with it to SEBI. In view of the same, the question of not furnishing the information does not arise. Further, SEBI has wrongly presumed that non-submission of the information is nothing but an attempt to conceal the true nature and operation of the fund mobilizing activity.

- f. From the *interim* order, the Company noticed that SEBI had received complaint from one Balaji Seva Sansthan. It has been said that Balaji Seva Sansthan had approached the Company before making a complaint to SEBI and had threatened. Balaji Seva Sansthan for no reason has included the name of Company along with the others as mentioned in the complaint. If Balaji Seva Sansthan really wanted to make a complaint against the Company then it should have made an individual complaint against it. Further, the complaint lodged with SEBI is not supported with an affidavit and no evidence has been produced along with the complaint. Vide its submissions, the Company has sought cross-examination of Balaji Seva Sansthan.
 - g. The Company vide its letter dated January 06, 2016, had requested SEBI to provide the copy of complaint, affidavit, statements and evidence to the effect of complaint and investigation report, if any as well as material available on record, on the basis of which *interim* order has been passed. Thereafter, a reminder letter was sent on February 06, 2016, to provide such documents. However, no investigation report has been provided, from the same, it can be presumed that SEBI had proceeded against the Company, in the absence of any investigation.
 - h. The Company has issued two notifications in the newspaper on April 01, 2016 and April 02, 2016, informing thereby its customers (those who had paid the plot booking amount) to take possession of the land after paying the balance amount.
 - i. SEBI has failed to see the figure of investors as mentioned in the Balance Sheet of 2012-2013.
10. Considering the above, I proceed further with the matter. I have considered the *interim* order, the submissions made by the noticees vide various letters and the material available on record. The argument of the Company that the complainant had approached it and had threatened and sought huge money, is without any proof. The Company in its reply has also sought cross-examination of the complainant.

In this regard, I note that the information from the complainant was only a trigger point for preliminary inquiry and thereafter SEBI had issued various letters i.e. dated March 28, 2013, September 26, 2013 and February 21, 2014, to the Company asking it to submit the relevant documents/ details. It is a fact that the noticees have till date not submitted the complete details about its nature of business except a few copies of

sale deed *inter alia* showing the sale of land to individuals and purchase of land and shops.

I note that the Company has not denied the plans illustrated in the *interim* order. The only argument taken in this regard is that such plans were never implemented. Further, the Company has also accepted for taking money from the customers against the development of land, which would be allotted and registered in respective names. It is seen that the Company has not submitted any document to show that the money taken from its customers/ investors were not under a scheme/ plan. The sale deeds as submitted by the Company do not talk about any development work done by the Company on the residential plots so sold. Further, the reasons for sale in such sale deeds is 'requirement of funds'.

I note that the Company has not submitted any documents to show how a person becomes customer of the Company and how the land is allotted to such customer. It is important to note that the noticees were also asked vide the *interim* order to submit the documents/ details as sought vide SEBI letters dated September 26, 2013, February 21, 2014 and July 03, 2014. However, till date no details/ documents have been submitted by the Company. Even after entering appearance for the personal hearing through the advocate, Arise has failed to submit the documents as asked vide the SEBI letters and the *interim* order. The Company and its directors have maintained silence on the nature of business undertaken and have not submitted even a single document till date. Non-submissions of such documents and not providing correct address till February 29, 2016, raises serious question on the genuineness of the claims made by the Company. Non-cooperation/ non-submission of information to regulatory authority needs to be taken seriously.

Further, as the allegations were serious, SEBI collected relevant details in its inquiry about the Company and its schemes. While analyzing these details, it was *inter alia* revealed that the Company is mobilizing funds from the public under its various schemes.

I note that the advocate of the Company has merely made the submissions in the reply and has not produced any documents to show that the complainant had approached

it before writing to SEBI. I also note that the Company has not intimated any steps/ action taken by them against the threat by the complainant. Further, it is noted that the Company has failed to co-operate with SEBI and is now making frivolous contentions which are not backed by any evidence/ proof. I also note that inspite of giving sufficient opportunities for providing the relevant details and documents, the submissions of the Company are not supported by any documentary evidence to make out any difference between its document and the documents available on record. In view of the same, the contention of the Company for cross examination of the complainant cannot be accepted.

11. The *interim* order has alleged that the plans/ schemes operated by the Company are in the nature of CIS and that the Company was offering these schemes without obtaining the registration from SEBI, in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act. The directors of Arise were also alleged to be responsible for the illegal conduct of the business of the Company. The *interim* order has noted the features of the alleged scheme offered by the Company.

12. The following are the observations from the *interim* order:

“...

- a) *ABDL (CIN: U45400MH2010PLC204510) was incorporated on June 19, 2010. It has its registered office at 002/ B Wing, Ground Floor, Mercury bldg, Mercury C. H.S.L. Poonam Sagar Complex, opp. Sector 9, Mira Road East, Mumbai- 401107. Its directors are Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav.*
- b) *The main object of ABDL as per the MoA, is "to carry on business of property developers, to acquire all types of land residential, commercial, industrial and agricultural lands, to acquire plots for colonization, or otherwise for sale or to construct buildings and to let them on rent, and to deal in lands". ABDL got its certificate to commence business on July 14, 2010.*
- c) *As per the details provided by the complainant, vide letter dated March 12, 2014, it is noted that ABDL is offering, inter alia, following schemes to general public:*
 - i. *Arise Bhoomi Single Plan*
 - ii. *Arise Bhoomi Bachat Instalments Plan*
 - iii. *Arise Bhoomi Investment plan*
 - iv. *Arise Bhoomi Instalment Plan*
 - v. *Arise Bhoomi MIB Plan*
- d) *The details of the abovementioned schemes of ABDL are tabulated as under:*
 - i. **Arise Bhoomi Single Plan:** *Under this plan, there are ten sub-plans, wherein the tenure of plan is varying between two years to eighteen years.*

		Expected Land Value	
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Area of Plot in Square Ft.	Consideration amount (₹)	Plan No 101	Plan No 102	Plan No 103	Plan No 104	Plan No 105	Accidental Compensation (₹)
		2 years	3 years	5 years	6 years	7 years	
20	1000	1200	1300	1750	2000	2200	1500
40	2000	2400	2600	3500	4000	4400	3000
60	3000	3600	3900	5250	6000	6600	4500

...

ii. **Arise Bhoomi Bachat Instalments Plan (Plan No 206):**

Area of Plot in Sq. ft	Instalments	P.P.T *	Total amount	Accidental Death benefit	During 11-15 years	During 16-20 years	During 21-25 years	During 26-30 years	During 31-35 years
500	5000	5	25000	25000	5000	6000	7500	7500	12500
1000	10000	5	50000	50000	10000	12000	15000	15000	25000
1500	15000	5	75000	75000	15000	18000	22500	22500	37500

*Payment Plan Term

...

iii. **Arise Bhoomi Investment plan (Plan No 207):**

Area of Plot in Sq. ft	Instalments	P.P.T *	Total amount	Accidental Death benefit	After 8 years Expected Land Value
500	5000	5	25000	25000	50000
1000	10000	5	50000	50000	100000
1500	15000	5	75000	75000	150000

*Payment Plan Term

...

iv. **Arise Bhoomi Instalment Plan:** There are six plans under this plan for different tenures such as 12 months(plan 208), 24 months (plan No.201), 36 months(plan No.202), 66 months (plan No.203), 84 months (plan No.204) and 120 months (plan No.205) having similar features. The details of the plan for a period of 66 months ((plan No.203) is illustrated as under:

No of units	Consideration amount	Installments				Expected Land Value	Accidental compensation
		Monthly	Quarterly	Half Yearly	Annually		
150	7500	120	350	700	1370	10950	11250
200	100000	160	470	925	1825	14800	15000
300	15000	240	700	1400	2740	21850	22500

...

v. **Arise Bhoomi MIB Plan:** This plan is for a period of 10 years.

No of units	Consideration amount	120 months	Expected Land Value	Accidental Compensation
10	50000	500	50000	90000
20	100000	1000	100000	100000
30	150000	1500	150000	1000

...

14. With respect to the documents of the Company, the *interim* order has observed as under:

“10. The applicants/ investors who are interested in the aforesaid schemes offered by ABDL are required to fill an application form and to execute an 'Agreement' with ABDL. After

the execution of the same, ABDL issues a 'Certificate' and 'Receipt cum Acceptance Letter'. The important aspects noted in the 'Terms and conditions attached to the Application form and the Clauses of Agreement are reproduced hereunder for reference:

I. Clauses indicated in the 'Terms and Conditions' of the Application Form:

- a) *"The land shall be allotted in the name of applicant in case of single plans/ installment plans after 90 days of receipts of full payment but in case of installment payment plans land shall be allotted after 60 days of receiving of 50% of consideration amount.*
- b) *The payment received under the plans shall be refundable subject to the following terms and conditions:*
 - *In case of completion of terms of agreement and all instalments are not paid.*
 - *If the applicant cancels the agreement then in such a case applicant is a defaulter. In such a case company after deducting all the expenses till that time will refund the rest amount.*
- c) *The applicant has the facility to opt out the allotment of the said property in his or her favour; this option can be exercised by the applicant by submitting a specific request to ABDL to that effect. The payment received under said plan shall be refundable to the applicant after deducting actual expenditure on development and maintenance.*
- d) *ABDL shall have first charge on said property on account of its unpaid instalments for services/developments/ maintenance charges and for other incidental expenses incurred by ABDL. The said property cannot, in any other manner be sold, assigned, mortgaged, pledged or alienated without obtaining No Dues certificate from ABDL by the applicant.*
- e) *The management of ABDL reserves the right to discontinue/ change/amend/ modify or alter prospectively or retrospectively any of the rules / regulations and plans and introduces new plans at any time at its sole discretion with or without any notice."*

II. Clauses indicated in the 'Proforma of Agreement'

- a) *"Irrespective of the profit and losses suffered by the company, the company hereby undertakes and assure to the investor to pay the amount of the investment plans on maturity as per the category subject to the fulfillment of terms and conditions.*
- b) *The company shall look after the financial side of the participation plans as well as the administration of the company and its said business and the investor shall have no nexus right of the shares or share capital of the company or to interfere the company or the management and the policies of the company or otherwise the board of directors will have sole and absolute discretionary powers as per the Companies laws.*
- c) *All the tangible and intangible assets of the company including the goodwill, stock in trade, benefit of business licenses and permits, benefits of contracts entered etc will be in the name of the company and the property of the company shall be used by the company exclusively for the business of the company and the applicant shall have no nexus or right, title and interest in connection therewith.*
- d) *The company has reserved its right to revival /amendment of this participation of investment plan certificate as per rules, regulations and procedures but same shall not affect the investment plan certificates already issued to associates.*
- e) *The company has as collaterals secured for realization of amount under said plan as agreed, issued letter of allocation of land with a ratio of Rs. 5000 participation equal to 100 sq ft. of land depending upon market price of land by Ready Reckoner of Government but this ratio can be changed / altered solely at the discretion of management depending upon promotion the cost/ value of land at the time of agreement. Further, the*

company reserves the right of area allocation depending on availability of land at the time of agreement. The company has issued separately the letter of allocation of land.

- f) *It is further agreed by and between the parties that in case the company is unable to repay the due return of participation of the plan, in that event only the company would help the applicant to dispose of the allocated land at the written request of the investor."*

III. Conditions in the allocation letter:

- a) *"The said allocation letter is issued as guarantee/ warrantee to collateral security to repay the amount of said investment plan as per the certificate issued.*
b) *In case the company goes in liquidation, then only the joint venture has right and company would help the joint venture or Associate to dispose of the aforesaid allocated land at the request of joint venture/ associates subject to law of land applicable at that relevant time."*

*11. It is noted that the 'receipt cum acceptance letter' issued by ABDL did not contain any identification of land/ plot. It only indicated **the expected sum of money payable** to the applicant upon completion of tenure.
..."*

15. I have perused the documents as noted in the *interim* order. Certain additional clauses also found to be relevant have been noted below:

"GENERAL TERMS AND CONDITIONS to the application form

...

*18. The applicant has the right to retain or sell the said property, to anybody or to the **ARISE BHOOMI** as he/ she may deem fit on expiry of tenure of this agreement to facilitate easy liquidity, **ARISE BHOOMI** provide to applicant the **marketing services for sale of development land.** ...*

AGREEMENT

...

*Whereas **ARISE BHOOMI** organises the sale of agriculture land of different sizes, to prospective buyers and undertakes the development and maintenance of the same.*

*Whereas **ARISE BHOOMI** is in the process of making arrangements/ has made **arrangements for purchasing/ procuring the land**, forming part of various plans launched by **ARISE BHOOMI**, with clear and marketable titles.*

...

*And whereas the customer has/ have requested **ARISE BHOOMI** to arrange for the sale of said agriculture land ... in his/her/ their favour, and **to develop and maintain the same by rendering various services** in accordance with the said Plan.*

*And whereas **ARISE BHOOMI** has agreed to arrange for the sale of the Said property in favour of the Customer, and to develop and maintain the same by rendering various services as aforesaid.*

..."

16. An analysis of the copies of the sale deeds submitted by the Company along with its letter dated May 06, 2016, is as under:
- a. The Company has submitted only four sale deeds whereby certain residential land has been sold to certain individuals.

- b. The Company has not submitted any list of its investors. In the absence of the same, it cannot be verified that such individuals were the customers of the Company.
- c. The said four sale deeds have been executed after passing of the *interim* order and the same appears to be an afterthought.
- d. The said four sale deeds do not discuss about any development on land and the nature of land in the sale deeds is shown as residential. The reason for the sale of plots is shown as requirement of funds and no plan of the Company have been stated in the sale deed.

I note that the sale deeds produced by the Company are very few compared to the scale of its business and are insignificant for establishing that the Company's business is real estate.

17. Having perused the documents available on record, now I proceed to deal with the characteristics of the impugned plans/ schemes floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act as alleged in the *interim* order. For concluding whether a scheme is a CIS or not, all the four conditions under Section 11AA(2) of the SEBI Act should be satisfied.

- i. The first condition is that *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement*. In this regard, I note that:
 - The Company accepts the contribution/ investments from the investors/ customers for subscribing to one of its plans for the purchase of agricultural land.
 - The Company does not identify the specific land to be sold to its customers.
 - The land is promised to be allotted in the name of the customer/ applicant in cash down/ lumpsum payment after 90 days of receipts of full payment. In case of installment payment plans, land is said to be allotted after 60 days of receipt of 50% of consideration amount.
 - Further, the clause in the 'agreement' that the Company is in process of '*making arrangements/ has made arrangements for purchasing/ procuring the land*', suggests that the Company till the date of agreement had only made arrangements for purchasing/ procuring the land.

- The documents do not provide the time period within which the possession of the land will be given to the customer/ investor.

These facts show that the Company pools the investment made by the customers, with an aim/ object of carrying out the overall plan/ scheme. From the same, it can be concluded that the ‘contributions, or payments made by the investors, are pooled and utilised by the Company for the purposes of the scheme or arrangement’, the scheme being to accept contributions/ payments in the name of sale of agricultural land. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. The second condition is that the *contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.* The plans of the Company and the certificate/ receipt cum acceptance letter only provides for the ‘expected sum payable’. The Company also provided for accidental compensation to its customers/ investors. From the same, it can be concluded that the investment/ contributions were made by the customers/ investors with a view to earn profits. In this regard, I also refer to the following observation of the *interim* order:

“..., as per the agreement, once repayment of participation is made to the applicant then the agreement along with allocation letter will be cancelled and the said land allocation to the applicant becomes free from holding of applicant and ABDL thereafter, has full holding of land. In the allocation letter, it is mentioned that the letter is issued as guarantee/ warrantee to collateral security to repay the amount of said investment plan as per the certificate issued. Further, in the certificate only the amount to be received after the completion of plan tenure is mentioned, no mention of land allocation is made. This clearly indicates that investments are made by the investors in the said schemes on account of the promise of assured returns. ...”

Considering the above, it is concluded that the customers/ investors had made the contribution/ payment to the Company with a view to earn profits/ income/ property/ return on the initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

- iii. The third and fourth conditions under Section 11AA(2) of the SEBI Act are being discussed together. The said conditions are that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors*

and the investors do not have day to day control over the management and operation of the scheme or arrangement. In this regard, I note as under:

- a. The payments/ investments made by the customers/ investors is retained by the Company, who in turn manages these on behalf of the customers/ investors during the term of plan.
- b. The Company reserves the right to discontinue/ change/ amend/ modify or alter prospectively retrospectively any of the rules/ regulations and plans and introduce new plans at any time at its sole discretion. The Company can allot land at some other place also.
- c. The Company has admitted of taking money from the customers/ investors against the development of the land. The same hints that development was an important part of the plan/ schemes of the Company. Further, the investments of the customers/ investors were managed and utilized by the Company, which in the end offered 'expected sum payable'.

The above discussion it can be said that the investments of the customers/ investors were managed and utilized by the Company at its discretion. In view of the same, it can be concluded that the plans/ schemes of the Company satisfies the third and fourth conditions under Section 11AA (2) of the SEBI Act also.

18. From the discussion above, it is evident that the Company solicits investments from its customers in its scheme of purchase of agricultural land. The scheme of the Company in taking monies from its customers/ investors and promising them 'expected sum' at the end of the contract, definitely fall within the ambit of Section 11AA of the SEBI Act. In this regard, I place my reliance on the following observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"..... sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

As all the four conditions specified under Section 11AA(2) of the SEBI Act are satisfied in the present facts of the case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of Section 11AA(1). While proceeding further, I place my reliance on the observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

“42. ...

... .. as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/ arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/ arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

... ..

53. ... therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of ... the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act ...”

In view of the discussion, the argument of the Company that it is in the business of real estate cannot be considered. Therefore, having concluded that the activities of the Company are CIS, in terms of Section 11AA of the SEBI Act, I proceed further with the matter.

19. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. The Company has clearly failed to do so. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'CIS'. A person can launch or sponsor or cause to sponsor a CIS only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of

the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

20. Further, in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and includes illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any CIS by any person. This provision in the above Regulations has been brought into effect from September 06, 2013. Accordingly, it could be held that by mobilizing public funds through CIS without obtaining registration from SEBI as required under Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations, the Company has contravened the above said provision.

21. **Liability of the Directors:** I note that the *interim* order was issued against the Company and its directors namely Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav. The details of the appointment these are as under:

Name	Date of Appointment	Date of Cessation
Mr. Papu Kumar Singh	19/06/2010	Continuing as director
Mr. Ravi Shankar Singh	19/06/2010	Continuing as director
Mr. Ratnesh Kumar Yadav	19/06/2010	Continuing as director

It is noted that Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav are the directors of the Company since its incorporation. In view of the same, I have no hesitation in holding that the Company and its directors namely Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav were engaged in the illegal fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act. In view of the above findings and observations made in this Order and the violations committed by the Company, it becomes necessary for SEBI to issue appropriate directions in order to protect the interest of investors and also to secure the interest of the securities market.

22. At this stage, I note the following observation of the *interim* order:

“12. The details of the financial statements provided by ABDL for the financial year 2010-11 and 2011-2012 and for the financial year 2012-13 as obtained from MCA21 Portal have been analyzed and the relevant summary is provided as under :

Sl. No.	Financial Year	Advance from customers (Long term borrowing)	Loan received from director, friends and relatives (Short term borrowing)	Total (₹)
1	2010-11	21,22,830	0	21,22,830
2	2011-12	3,27,59,375	15,37,051	3,42,96,426
3	2012-13	8,38,60,276	2,33,148	8,40,93,424

...

14. As per the "Career Guidelines" circulated by ABDL, it is holding 32 acres of land at Dindori (Madhya Pradesh), 21 acres of land at Akola (Maharashtra), Residential house of 3000 square feet at Greater Noida (Uttar Pradesh), 1000 square feet office space at Greater Noida and 17 acres of land at Ramnagar, Varanasi (Uttar Pradesh). However, it is observed from the balance sheet for the financial 2012-13 that the entity has fixed asset of only ₹54,04,385. Further, it is noted that as on March 31, 2013, ABDL has liability of ₹8.31 crores as advance from customers.

...

18. ... It is observed from the balance sheet for the financial year 2012-13 that ABDL has fixed asset worth ₹54,04,385/-. Further, it is noted that as on March 31, 2013, ABDL has liability of ₹8.31 Crores as advance from customers. It is noted that the entire value of fixed assets as mentioned in the balance sheet is too less compared to the amount of liability of the ABDL.”

In this regard, I note that the noticees have not denied the above allegations of the interim order. Further, it is seen that there is a wide gap between the fixed assets of the Company against its liability towards the customers. The Company in its reply dated May 06, 2016, has valued its total land holding at ₹17,22,80,000 and has also stated that the value of total land allotted is ₹14,02,64,018. The Company has also submitted a year-wise land booking amount received by the Company and the payments made against cancellations of booking since 2010, however, in absence of any list of customers/ investors, the veracity of such claim cannot be verified.

23. In view of the observations made in this Order, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

- a. **Arise Bhoomi Developers Limited [PAN: AAICA5915H], Mr. Papu Kumar Singh [PAN: BFBPS2869N], Mr. Ravi Shankar Singh [PAN: BGMP55091L] and Mr. Ratnesh Kumar Yadav [PAN: ACHPY6664]** shall abstain from collecting any money from the investors or launch or carry out any Collective Investment

Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.

- b. Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** shall wind up the existing Collective Investment Schemes and refund through 'Bank Demand Draft' or 'Pay Order', the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
- c. Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** are permitted to sell their assets only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.
- d.** After completing the aforesaid repayments in terms of sub-paragraph (b) above, the Company shall file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').
- e. Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** are also directed to immediately provide a complete and detailed inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.
- f. Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** are restrained from accessing the securities

market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.

g. In the event of failure by **Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** to comply with the above directions, the following actions shall follow:

- **Arise Bhoomi Developers Limited, Mr. Papu Kumar Singh, Mr. Ravi Shankar Singh and Mr. Ratnesh Kumar Yadav** shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four (4) years of restraint imposed in **sub paragraph (f)** above, till all the Collective Investment Schemes of **Arise Bhoomi Developers Limited** are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against **Arise Bhoomi Developers Limited**, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
- SEBI would make a reference to the Ministry of Corporate Affairs, to initiate appropriate action as deemed fit against the Company, **Arise Bhoomi Developers Limited**.
- SEBI would also make a reference to the Ministry of Corporate Affairs to restrain the abovementioned noticee directors from being directors in other companies.
- SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

24. This order shall come into force with immediate effect.

25. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against **Arise Bhoomi Developers Limited**, including persons who are in default, for the violations as found in this Order.

26. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE : May 31st, 2016

PLACE : Mumbai

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**