

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11B OF SEBI ACT 1992 READ WITH SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 1999 IN THE MATTER OF ROSE VALLEY REAL ESTATES & CONSTRUCTIONS LTD

1. Securities and Exchange Board of India (SEBI) received a letter dated December 7, 2009 from the Director of the Economic Offences Investigation Cell, Government of West Bengal stating that "M/s. Rose Valley" had been raising funds in certain districts of West Bengal, and as such was allegedly running a Collective Investment Scheme (hereinafter referred to as 'CIS') without obtaining a Certificate of Registration from SEBI. Preliminary enquiries in this regard were made with the company. Details of mobilization of funds were sought to examine the applicability of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'CIS Regulations') and to ensure that the interest of investors is adequately protected. In the course of the enquiry, it was observed that one of the group companies, M/s Rose Valley Real Estates and Constructions Ltd. (hereinafter referred to as the company/ Rose Valley), has been inviting contributions from the general public through one 'Ashirbad' scheme without obtaining a Certificate of Registration from SEBI.
2. I note that M/s. Rose Valley Resorts and Plantation Limited (hereinafter referred to as the 'RRPL') was running a CIS Scheme since 1997. RRPL had filed an application with SEBI for grant of certificate of registration pursuant to the notification of the CIS Regulations on October 15, 1999. However, the said application of the company was rejected by SEBI in 2003, following which it wound up the CIS scheme and repaid money to investors.
3. Information/ documents were sought from the company vide separate letters dated January 8, 2010, March 3, 2010, May 17, 2010, July 9, 2010 and November 3, 2010. The company was asked to provide information regarding the terms and conditions of the schemes, whether instruments were issued to the investors after receipt of funds, whether such instruments are transferable, options available to the investor if he did not want to own the land, quantum of funds raised through the schemes from the public along with period of such schemes, and promises or assurances or claims of assured returns made in the schemes. Further, SEBI asked for certified copies of offer

documents, application forms, pamphlets, brochures of the schemes launched and copies of the executed agreements between the company and the investors.

4. The company, vide its letters dated February 8, 2010, March 18, 2010, June 18, 2010 and August 20, 2010 provided information about its nature of business. Further, vide SEBI's letter dated November 3, 2010, the company was, *inter alia*, asked to submit the details of allotment of land to investors. In response to same, the company has, vide its letter dated November 15, 2010, sought three months time to provide the information and has also stated that it may provide the information in a phased manner. It is noted that the company did not have the basic data, which is similar to unit holders' register, readily available.
5. Based on the submission of the company, I note the following:
 - a. The scheme involves selling of plots of land on a future date against Earnest Money (hereinafter referred to as 'EM' / 'EMD') received in advance in installments;
 - b. A portion of the agreed sale price of the plot is given as EM as per a pre fixed table and the company issues money receipt against each such deposit;
 - c. The company provides a pre determined credit value against the EM so deposited and the same is adjusted against the purchase value of the plot;
 - d. If a person does not want to possess the land after payment of EM, the pre determined credit value is returned to him; the credit value so determined is more than the total EM. This is evident from the following tables:

Table – 1

Ashirbad Scheme – A (for 1 katta)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	420/-	5040/-	5400/-	360/-	12.50% (Approx)
E-1 (24 months)	210/-	5040/-	6050/-	1010/-	17.50% (Approx)
E-2 (36 months)	140/-	5040/-	6838/-	1798/-	19.00% (Approx)
E-3 (60 months)	90/-	5400/-	8812/-	3762/-	18.00% (Approx)

Table – 2

Ashirbad Scheme – A (for 2 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	840/-	10080/-	10800/-	720/-	12.80% (Approx)
E-1 (24 months)	420/-	10080/-	12100/-	2020/-	17.50% (Approx)
E-2 (36 months)	280/-	10080/-	13676/-	3596/-	19.00% (Approx)
E-3 (60 months)	170/-	10200/-	17624/-	7424/-	20.00% (Approx)

Table – 3

Ashirbad Scheme – A (for 3 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	1250/-	15000/-	16200/-	1200/-	14.00% (Approx)
E-1 (24 months)	630/-	15120/-	18150/-	3030/-	17.50% (Approx)
E-2 (36 months)	420/-	15120/-	20514/-	5394/-	20.00% (Approx)
E-3 (60 months)	250/-	15000/-	26436/-	11436/-	21.00% (Approx)

Table – 4

Ashirbad Scheme – A (for 5 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	2090/-	25080/-	27000/-	1920/-	13.50% (Approx)
E-1 (24 months)	1050/-	25200/-	30250/-	5050/-	17.50% (Approx)
E-2 (36 months)	700/-	25200/-	34190/-	8990/-	19.00% (Approx)
E-3 (60 months)	420/-	25200/-	44060/-	18860/-	21.00% (Approx)

Table – 5

Ashirbad Scheme – A (for 10 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	4170/-	50040/-	54000/-	3960/-	13.50% (Approx)
E-1 (24 months)	2090/-	50160/-	60500/-	10340/-	18.00% (Approx)
E-2 (36 months)	1390/-	50040/-	68380/-	18340/-	20.00% (Approx)
E-3 (60 months)	840/-	50400/-	88120/-	37720/-	21.00% (Approx)

Table – 6

Ashirbad Scheme – B (for 1 katta)**				
Options	Initial payment (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E-2 (36 Months)	5000/-	7000/-	2000/-	11.40 % (Approx)
E-3 (70 Months)	5000/-	10000/-	5000/-	12.00% (Approx)

* The interest rate has been calculated on 'Quarterly compounding' basis.

** In this case the credit value is proportionate for 1 katta, 2 kattas, 3 kattas, 5 kattas & 10 kattas.

- In response to SEBI's letter dated May 17, 2010 and July 9, 2010 seeking more details about the location of the land bank, plots allotted under the scheme, EMD received under the scheme, refund made due to cancellation of booking etc, the company has provided the information vide their letters dated June 18, 2010 and August 20, 2010 and the same can be observed from the Table -7 given below.
- The company has mobilised ₹ 1271.98 crore till March 31, 2010 under the 'Ashirbad' scheme and has made a refund of ₹ 342.20 crore to those investors who opted for the 'credit value' instead of the land booked. The details of the fund mobilized and refund made by the company are shown in the following table:

Table – 7

Financial Year	No. of Plots allotted under the Ashirbad scheme	No of Plots (along with area) actually handed over	Total Amount received as on date under Ashirbad Scheme (Cl Bal)	Total EMD received as on date under Ashirbad Scheme (Cl Bal)	No. of plots(along with area) where refunds have been given	Amount of EMD in refund cases	Total amount of refund made till date
	(Kattas)		(₹/Cr)	(₹/Cr)	(Kattas)	(₹/Cr)	(₹/Cr)
2003-04	1020	Plots: 4045 Rea: 9132 (agreement for sale made towards allotment)	2.55	2.55	-	-	-
2004-05	1528		3.82	3.82	-	-	-
2005-06	1500		3.75	3.75	208	0.52	0.52
2006-07	18372		45.93	45.93	712	1.78	1.78
2007-08	90208		225.52	225.52	1056	2.64	2.64
2008-09	226552		566.38	566.38	1592	3.98	3.98
2009-10	508792 (area under provisional allotment)		1271.98	1271.98	118880	297.20	342.20

8. I observe that the land bank of the company consists of land located in various areas like Rajarhat, Durgapur, Salboni, Jhargram, Bankura, Saltora, Bagnan, Malbazar, Siliguri, Birbhum, Maldah, Ranaghat, Agartala (Tripura), Chindbara (MP), Orissa etc.

9. I have carefully considered the various documents on record, including the submissions made by the company. I note that:-

- a. The company invites application to book plots of land for residential/ commercial units. It undertakes to develop the property into 'Rose Valley City' by making master plots (commercial plots, mall, play grounds, residential plots) of the units so that several person/ persons after purchase of the Master Plots can build their own house. Development of the land in such a way requires pooling of the money received in installments from the different potential purchasers of the land. The company, in one of its letter has also submitted the following:

“Since the value of stock of Land originally earmarked to the customers against advance booking of plots have also appreciated with the passage of time, the amount of credit value of Rs. 45 crore that were paid to the customers, instead of land, are being treated as an increased value of the stock of land under the possession of the company”

From the above it is clear that the land allotment is not made vis-à-vis the investor i.e. there is no demarcation of land for the investor and his investments, thus the investments appears to be pooled when the investors are paying EM installments.

Further, a typical real estate business would price its land banks depending on the location, terrain, current and future potential of use of the land/ land bank. It is a prevalent and innate feature of real estate that even within the same location, there may be differential pricing taking into account the floor rise, etc. However, the schemes of the company claim to be a pure real estate developer on the premise that all investors in these schemes get a piece of land at a fixed price. As per the submissions, the company has land banks at more than one place. Lands/ land banks at difference places would be valued differently. However, it is noted that in the current case no demarcation in terms of pricing of land. The land is proposed to be sold according to the plans offered under the Ashirbad scheme and not on the basis of pricing of land based on its location or otherwise. Hence, it appears that the land units are fungible and irrespective of location, the price remains the same.

- b. The investors have an option to receive the credit value after making payment of the entire earnest money installments. It is observed that the investment is made with a view to earn profit.
- c. The specification of the land given in the agreement is not in terms of any khata/ khasra/ street etc., as generally land is identified in revenue department. It is observed that the mention of a plot no. in the agreement is more in the nature and form of a unit issued by the company. Further, it is on record that all such plots, whether identified or not, which form part of the schemes are managed by the company on behalf of the investors. Thus the management of the money lies with Rose Valley and the investors do not have any day to day control over the management and operation of the scheme. The investors need to approach the company when they wish to get a refund for their investment or get final allotment of land.

10. In addition to these notings, the following is observed:

- a. A typical real estate business would make a case for selling the portions of land by penalizing the investor(s) backing out from the agreement by forfeiting the earnest money. In the current case, the company itself has stated that “many of the intending purchasers do not opt for execution of agreement”. I note that as per the ‘agreement for sale’, the company shall forfeit 25% of the amount paid by the investor if the investor does not want to purchase the agreed Master Plot in spite of making payment of the entire consideration money. However, cancellation before the payment of the entire consideration money does not attract any penalty. The company, on the other hand, offers a benefit to investors who choose to opt out of allotment of land by providing them the option of gaining lucrative returns in the form of credit value. Thus this appears to be more of an investment avenue rather than a real estate company scheme.
- b. The installment plan outlined at Table 1 above seems to offer an investment scheme rather than a real-estate business plan where investments for as low as Rs. 420 p.m. (Ashirbad Scheme – A for 1 katta of land) have been invited.
- c. Further it is evident from the Table 7 above, that in FY 2009-10, the number of plots ‘allotted’- ‘provisionally allotted’ as per scheme definition stands at 508792 kattas of land. However, only 4045 plots have been actually handed over. The number of plots for which refund has been made in FY 2009-10 is 118880 plots. Hence, even though the company is collecting huge amounts as earnest money, the actual allotments do not seem to form a substantial number as compared to number of plots provisionally allotted.
- d. Thus it is observed that the scheme of ‘allotment’ as purported to be real estate by the Company, is in fact be a garb for collecting monies for collective investment and then providing returns. In the case of PGFL, where CIS schemes were touted as real estate business, the Hon’ble High Court of Punjab and Haryana has stated that ---

“The agreement to sell and the sample sale deed relied upon to demonstrate that the sole activity of the PGFL is sale and purchase of agricultural land and/or sale and development of agricultural land, is a sham and a mere paper transaction. The said activity of sale and purchase of agricultural land and/or development of agricultural land, projected by the PGFL, in our view, is with the aim and object of screening its real activity...

... irrespective of the preceding conclusion, on an analysis of the activities of the PGFL (as have been projected by it), it is clear that the PGFL satisfies all characteristics/ingredients of a 'collective investment scheme', expressed, in section 11AA(2) of the SEBI Act. The PGFL is, therefore, a 'Collective Investment Scheme' for the purposes of the SEBI Act.”

- e. Given the above, I note that the schemes of the Company are more CIS schemes than real estate schemes.

11. Section 11AA of the SEBI Act, 1992 provides that any scheme or arrangement which satisfies the following conditions shall be a collective investment scheme:

- a. the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
- b. 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;
- c. the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
- d. the investors do not have day to day control over the management and operation of the scheme or arrangement.

12. Thus, the company is raising funds in the name of sale of plots of land. It first receives earnest money in installments from a purchaser, pools the fund so mobilized and uses it to develop the land, and thereafter provides return at the option of the investor on the amount invested at the end of the scheme in the form of credit value. This credit value can then be utilized by the investor to either adjust partly against the cost of land or to get refund for the investments made from the company. These activities of the company are akin to the features of a CIS, specified under the section 11AA of the SEBI Act read with regulation 3 of the CIS regulations.

13. In view of the foregoing, it *prima facie* appears that the company is running CIS schemes without obtaining a certificate of registration from SEBI. Thus, M/s. Rose Valley Real

Estate and Construction Ltd. has *prima facie* violated regulation 3 of CIS Regulations read with section 11AA of the SEBI Act, 1992.

14. The interest of investors is the first and foremost mandate for SEBI. Under the facts and circumstances of the case, SEBI has to take emergent steps to prevent activities indulged into by companies or entities defrauding the investors, damaging the orderly development of the securities market. I note that M/s. Rose Valley Real Estate and Construction Ltd. has to be prevented from further carrying on the activities of a CIS, including soliciting money from the public, without due registration from SEBI.
15. In view of the same, I, in exercise of the powers conferred upon me under section 11B of the SEBI Act, 1992 and regulation 65 of CIS Regulations, hereby direct the company:
 - a. not to collect any money from investors or to launch any scheme;
 - b. not to dispose of any of the properties or delineate assets of the scheme;
 - c. not to divert any fund raised from public at large kept in bank account and/or at the custody of the company.
16. The above directions shall take effect immediately and shall be in force until further orders. The company may file its objections to this order, if any, within 15 days from the date of this order. Further, the company may, if it so desires, avail itself of an opportunity of personal hearing on a date and a time to be fixed on specific request, to be received in this behalf from the company within 15 days from the date of this order.

Place: Mumbai

Date: January 03, 2011

PRASHANT SARAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA