

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under sections 11(1), 11B and 11(4) 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 M/s Remac Realty India Ltd. (CIN U70102WB2009PLC132005) and its Directors viz. Mr. Partha Pratim Tewari (PAN ABIPT7044A), Mr. Arnab Roy (PAN-AGKPR7967B), Mr. Ganesh Kumar Bagaria (PAN AFVPB4730Q), Ms. Leena Tewari (PAN ABUPT9628E), Ms. Reena Vijay (PAN AEEPV9521M), Mr. Sandip Chattopadhyay (PAN AGIPC6237B) and Mr. Debapratim Mazumder (PAN AMYPM6746R).

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a complaint dated June 07, 2013, alleging mobilization of funds by M/s Remac Realty India Ltd. (hereinafter referred to as "**Remac Realty**") from the public for various collective investment schemes offered by it.
2. As a matter of preliminary inquiry into the alleged mobilization of funds by Remac Realty, SEBI, vide letter dated August 14, 2013, *inter alia* sought the following information in relation to its business activities, viz.-
 - i. Copies of Memorandum and Articles of Association (**MoA and AoA**) of Remac Realty,
 - ii. Copy of audited Balance Sheet and Profit & Loss account of the company for the last 3 years,
 - iii. Details of all the Promoters/Directors and key managerial personnel,
 - iv. Statement of mobilization and deployment of funds under various scheme duly certified by the statutory auditors of Remac Realty,
 - v. Structure and terms and conditions of the scheme/plan,
 - vi. Details of the scheme wise amount mobilized till date along with the number of investors under schemes,
 - vii. Details of assured returns made in the scheme,
 - viii. Sample Copies of Brochure, Pamphlets, Application forms, agreement letter/contract, registration letter and allotment letter pertaining to the scheme.

2.1 After protracted correspondence and reminders, Remac Realty vide letter dated October 3, 2013, while stating *inter alia* that "*.. we have started delivering the solar products against advances received from Mar'12 and are also in the process of allotting real estate land parcels from Mar'14 onwards..... products floated by us do not fall under the SEBI (Collective Investment Schemes) Regulations, 1999*", submitted the following documents,

- i. Copies of MoA and AoA of Remac Realty;
- ii. Copies of audited Balance Sheet and Profit & Loss account of the company for the last 3 years;
- iii. Statement of corpus funds and their deployment;
- iv. Details of the products sold by Remac Realty as per the copies of documents enclosed.
- v. Sample copies of "*Application form*" for the Schemes of *Jeevan Samriddhi, Banijsya Sampad, Griha Sampad and Bhumi Sampad* ;
- vi. Sample Copy of "*Application form for Advance Booking of Solar Products through monthly installment scheme*";
- vii. Copy of agreement form for the scheme "*Bhumi Sampad*"
- viii. Copies of "*Registration Letter*" and "*Provisional Allotment Certificate*" pertaining to the schemes.

3. I have carefully perused the documents and materials available on record such as, the complaint received by SEBI against Remac Realty in relation to its alleged mobilization of funds; correspondence exchanged between SEBI and Remac Realty along with the documents contained therein; the submissions made by Remac Realty etc. The issue for determination in the instant matter is whether the mobilization of funds by Remac Realty is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

3.1 On an examination of the material available on record, it is *prima facie* observed that:

- (i) Remac Realty was initially incorporated as SGP Realcon Pvt. Ltd. on January 15, 2009, then changed its name as Remac Realty India Pvt. Ltd. on December 3, 2009 and finally, as Remac Realty India Ltd. (Remac Realty) on June 22, 2010

(CIN:U70102WB2009PLC132005). It has its registered office at 41A, S. P. Mukherjee Road, Kolkata, West Bengal.

- (ii) The Directors of Remac Realty are Mr. Partha Pratim Tewari, Mr. Arnab Roy, Mr. Ganesh Kumar Bagaria, Ms. Leena Tewari, Ms. Reena Vijay, Mr. Sandip Chattopadhyay and Mr. Debapratim Mazumder
- (iii) As per the MoA, the main objects of Remac Realty are "*to acquire by consultancy management, lease, exchange, ownership, purchase, hire, rent or otherwise acquire deal in construct, let out finish, warehouse or any of the function of proprietors of real estate, shopping mall,*"
- (iv) Remac Realty offers various schemes/plans, inviting funds from investors towards its various schemes for availing the "*services/property/products*" of Remac Realty, viz. "*Remac County Club Membership*", "*Commercial Property for commercial Purpose*", "*Residential Property*", "*Solar Products*", "*Land/plots*" etc. The investors who are interested in the said schemes offered by Remac Realty are made to enter into an "*Agreement*" with it after filing an "*Application Form*". On perusal of the sample copies of "*Application Forms*" submitted by Remac Realty in respect of its schemes for availing the "*services/property/products*", it is observed that the schemes are broadly classified into, "*One Time Payment Scheme*" and "*Monthly Instalment Scheme*". Following are the details of various schemes offered by Remac Realty,

I. One Time Payment Schemes

- *Jeevan Samriddhi* - The preferred option of service/property available under this plan/scheme (as per the "*Application Form*") is "*Remac County Club Membership*".
- *Banijya Sampadh* - The preferred option of service/property available under this plan/scheme is "*Commercial Property for commercial Purpose*",
- *Griha Sampadh* - The preferred option of service/property available under this plan/scheme is "*Residential Property*"

II. Monthly Installment Scheme

- *Scheme Bhumi Sampadh* The preferred option of service/property available under this plan/scheme is "*land/plot*",

- ***Scheme for booking of solar products*** The preferred option of service/property available under this plan/scheme is "Solar Panels/Products".
- (v) Following clauses are noted from the "Application Form" for the scheme of "Bhumi Sampad",

Terms and Conditions

- *The purchase amount of the property would be decided by the company from time to time with different schemes and upon his/her failure the company may rescind the contract.*
- *Application amount will be kept static for a lock-in period as mentioned in the scheme documents and the applicant cannot withdraw the earnest money.*

Bhumi Sampad

- *Upon receipt of complete application form along with the money from the intending applicant, the company will accordingly issue an acknowledgement slip in favour of the applicant regarding the receipt of the money and agreement whereby it would be mentioned that after the specific period of the lock in from the date of application, the applicant has to submit the prescribed application form for the allotment of the property and within 15 days the applicant has to confirm his decision of either issuing the allotment in his/her favour or offer the desired stock back to Remac Realty India Ltd with an assured return after the expiry of the lock in period, which includes both principal with benefit on the investment.*
 - *Upon receipt of the confirmation in the prescribed form from the applicant one month prior to the expiry of the lock in period from the date of application, the company will execute and transfer the property by virtue of a Registered Sale Deed in favour of the Applicant within 3 months and deliver possession thereof to the purchaser of the property mutually decided, and in all cases, stamp duty registration charges and incidental charges, developmental charges, etc. shall be borne by the applicant himself/herself. The applicant shall pay rates and taxes etc. to the concerned authority in respect of the property as and when required time to time after such execution in his /her favour to take the effect of mutation.*
 - *The company reserves the right to reject any application without assigning any reason whatsoever.*
 - *RRIL has the right to build /develop / do joint venture /associate or assign any project to its subsidiary company, merge or take partners in its future development of projects and business ventures as deemed fit to support or raise funds to execute projects within the time frame to meet its obligations.*
- (vi) Similar clauses (as quoted above) are also noted in the "Application Forms" for the scheme of *Jeevan Samriddhi, Baniyya Sampad, Griha Sampad* etc. offered by Remac Realty. For instance, the "Jeevan Samriddhi" scheme pertains to purchase of county club membership. The applicant has to submit application form along with the

required application amount/earnest money to Remac Realty. Remac Realty would accordingly issue "Acknowledgement Slip" regarding receipt of money and certificate whereby it would be mentioned that after the specific period of lock-in from the date of application, the "Remac County Club Membership" would be offered and the "applicant"/investor has to apply in the prescribed application to hold the club membership. Remac Realty would initiate the interview process for granting membership and the selected members/"applicants" have to pay the balance amount of membership fees, if any and all other incidental charges. In case the applicant applies to opt out of the scheme for club membership, then he/she would be refunded the application amount along with an "assured return" after the expiry of the lock-in period, which includes both principal and interest bearing on the investment.

(vii) From the sample copy of an "Agreement" for the Scheme "Bhumi Sampad", following are noted,

- *"Remac Realty" proposes to develop the various plots of land to provide housing accommodation of affordable homes by sale of plots of land in different sizes measuring in sq.ft. each on which self owned houses Terms and conditions of all such projects would be applicable respectively as per allotment letter there upon.*
- *The process of completion of acquisition of the said plots of land, obtaining requisite permissions from the Government authorities and development of the said plots of land is a time consuming process.*
- *"Remac Realty" confirms having received the application alongwith an application amount of Rs.____/-(Rs...Only) as Down payment OR Rs.____/-(Rs...Only) as application amount and balance of Rs.____/-(Rs.....Only) to be paid as EMI of 9 consecutive months for allotment of the property as mentioned in the application form as " Preferred Option of Property" to be developed /constructed by "Remac Realty" in proposed selected land parcel.*
- *Upon the said application "Remac Realty "will make provisions for allotment of the plot of land / Apartment in favour of the applicant after... months from the date of application and payment of full application amount. This allotment will be in accordance with the terms and conditions contained in the application form.*
- *The application money deposited by the applicant is for the initial period of ... months from the date of application and payment of the full application money. In no*

circumstances the application money paid by the customer cannot be refunded back within that initial period ofmonths.

- *In the event the applicant decided not to hold the Provisional allotment of the said Property which has to be decided withindays of the issuance of the provisional allotment letter and as the applicant doesn't wish to invest further as per the new General Terms and Conditions and Payment terms of the said property, the advance amount paid as application amount would for Katha would be refunded along with the compensation for the initial period ofmonths and the said amount as mutually agreed upon is Rs/- (Rupees...Only).*
- *In this event the applicant decided to hold the Provisional allotment, issuance of the final allotment of such property is the sole discretion of "Remac Realty" and is subject to availability and all such payments and terms and conditions of the GTC of the said Project where the property offered to the applicant by "Remac Realty" would be made by the Applicant.*
- *"Remac Realty" and / or its group companies will make final allotment of the said property and such final allotment will be acceptable to the applicants. In such event:*
 - a. The application money will be adjusted against the prevailing official selling price of the said property.*
 - b. The applicant will pay the balance price of the said property to "Remac Realty" or its group companies as per the respective General Terms and Conditions that particular allotted project where the allotment has been made by "Remac Realty" and accepted by the Applicant". All payment terms whereupon would be as per the advice of "Remac Realty" and applicant must adhere to such terms of payment.*
- *The applicant where by he /she is free to resale /assign /transfer the ownership of the property any time after the acceptance of the Allotment at the prevailing official selling price /rate and not below the current official selling price of the company and he/she has to pay @ ____ % of the transaction value as administrative charges to the company ("Remac Realty").*
- *In the event of the final allotment made in favour of the applicant, the applicant and /or its nominee shall have right to construction made thereon in accordance with specific laws and abide by the rules and regulations framed by "Remac Realty". The Applicant has to adhere to all terms and conditions as per the General Terms and Conditions of the said project. Such construction will be made only through "Remac Realty" or its nominated group company and through no other person / Company.*
- *In the event the applicant doesn't intimate his willingness to obtain final allotment of the property within the aforesaid period of ... (.....) days from the date of*

provisional allotment, it will be deemed that the applicant is desirous of not to invest further in the said property as per the General Terms and Conditions and Payment Terms. In that case "Remac Realty" will refund the application money along with the compensation amount mentioned above in clause no.6 after the expiry of the initial period of months from the date of application and payment of the full application money.

- (viii) It is further observed that Remac Realty issues "Provisional Allotment Certificates" to the "applicants"/investors of the scheme of allotment of a plot of land for residential/commercial unit. The said certificate contains the details of the application amount, "Date of refund upon non-acceptance of scheme", "quantum of credit value"/assured return on expiry of the period, etc.
- (ix) As regards, the scheme for "advance booking of solar products", it is observed from a copy of certificate issued to the "applicant"/investor, that for booking a solar product of ₹17550/-, the "applicant"/investor has to pay only ₹15000/- (i.e. ₹1000/- as monthly instalment for 15 months), which means that the "applicant"/investor gets a discount of ₹2550/- on the product. From the sample copy of the "Application for Advance Booking of Solar Products", it is observed that if the "applicant"/investor chooses not to accept the product booked, after the scheme period, the applicant would be eligible for a refund amount, i.e the product price, which includes the discount amount in the form of profit/return.
- (x) The aforementioned details from the various plans offered by Remac Realty and the details of the "Provisional Allotment Certificate"/certificate issued by it further reveals that at the end of the term, as opted by the "applicants"/investors, they are offered an amount as "credit value or "discount amount"/profit/return. For instance, in case of the scheme for "advance booking of solar products", if the "applicant"/investor chooses not to accept the product at the end of the term, he/she would get the refund amount which comprises of the profit or return in the form of discount amount i.e. "applicant"/investor is entitled for the amount invested plus the discount offered by Remac Realty on the product.
- (xi) Details regarding the funds raised by Remac Realty against advance booking in respect of the aforesaid schemes, and the details of its deployment, furnished by

Remac Realty vide its letter dated October 3, 2013 to SEBI are reproduced as under:

Name of the Scheme	Amount (₹ in crores)
Bhumi Sampadh	07.67
Advance booking against land	07.42
Real estate product	05.26
Advance booking against solar product	28.80
Jeevan Samriddhi/ Baniya Sampad/ Griha Sampad	13.78
Sub-total	62.93
Share Capital	0.05
Secured Loans	0.47
Grand Total	63.45

Deployment/Utilization	Amount (₹ in crores)
Land	2.02
Vehicles	0.83
Office equipment	1.26
Investments	0.27
Security deposits	0.84
Investment in projects	7.73
Loans and advances - Others	1.22
Foreign exchange	0.05
Administration Overheads	49.23
Total	63.45

4. The aforementioned features of the various schemes of "Sale of products/property/services" offered by Remac Realty appears to be a "scheme". In view of this, the aforementioned details of the "schemes"/plans offered by Remac Realty, have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) [or sub-section (2A)] shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any [person] under which,-

- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

- (ii) 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;*
 - (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
 - (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement."*
- [(2A)] Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.]"*

4.1 In the context of the abovementioned Section 11AA of the SEBI Act, the "schemes"/plans offered by Remac Realty, is examined as under:

- i. *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.*

From the various schemes offered by Remac Realty viz. "Jeevan Samriddhi", "Baniyya Sampadh", "Griha Sampadh" and "Bhumi Sampadh", it is observed that Remac Realty collects application amount/earnest money from "applicants"/investors. The said amounts collected from them are locked-in for a specific period and refund is made only after the expiry of the lock-in period. After the specific lock-in period, the "applicants"/investors have the option to choose either the allotment of property/club membership/product or refund of the application amount along with the "credit value"/assured return. In this context, it is pertinent to note certain clauses in the "Agreement" as quoted in the preceding paragraphs, which point out that in the event, the "applicant"/investor decides to opt for the property/service/product offered/rendered by Remac Realty, the final allotment of the same is at the sole discretion of Remac Realty and is subject to availability and the payments made by the "applicants"/investors are adjusted against the "prevailing official selling price" of the property. It is also pertinent to note that neither the "Agreement" nor the "Provisional Allotment Certificate" contain any details or specification of the product/property. This indicates that the funds initially collected from the "applicants"/investors, which are locked in for a particular period are pooled and utilized for the "scheme"/plan and not towards the consideration amount of the property/service to be sold/rendered by Remac Realty. Therefore, it is observed that the contributions or investments received

from the "applicants"/investors are pooled and utilized solely for the purpose of the "schemes"/plans. I, therefore, find that the instant "scheme"/plan satisfies the first condition stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. *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.*

It is observed from the various clauses in the "Agreement" entered into between the Remac Realty and the "applicant"/investor and from the "Provisional Allotment Certificate" issued by the Remac Realty that Remac Realty offers an assured return/profit in the form of "credit value" after the expiry of the term. For instance, if the "applicant"/investor is investing in "Monthly Installment plan" for an amount of ₹17550/- by paying monthly installments of ₹1000/- for a period of 15 months, the value he/she would receive on expiry of the period is an amount of ₹17550/- and an additional of ₹2550/- as "discount"/assured return. As has been noted from the various clauses of the "Agreement", quoted in the preceding paragraphs, Remac Realty's discretion to decide the final allotment of the property, which is subject to the availability of the property/plot/land coupled with an indication of the "credit value"/assured return in the "Provisional Allotment Certificate" issued to the 'applicant'/investor indicates that the 'applicant'/investor are left with the option to receive the pre-determined "credit value" at the end of the agreement term as per the opted scheme. In light of the above, it is *prima facie* observed that the investment is made with a view to receive profit/property, whether movable or immovable, derived out from the scheme or arrangement. Hence, the second condition, which stipulates 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 as stipulated in section 11AA (2) (ii) of the SEBI Act is also fulfilled.

- iii. *The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and*
- iv. *The investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

It is observed that the investments made by the '*applicants*'/investors (in the form of application money/ monthly instalments) are managed and utilized by Remac Realty. In case of Jeevan Samriddhi, the applicant has no say on how the initial money paid by him is being utilized by Remac Realty to develop the club facilities. Further, the facilities to be provided in the said county club and grant of membership to the said club are also decided by Remac Realty. Further, in case of the scheme related to property, the "*Agreement*" entered into between the "*applicant*" /investor stipulates that Remac Realty would make final allotment of the property and such final allotment would be acceptable to the applicants. The aforesaid clauses of the agreement clearly indicate that the "*scheme*" /plan is managed by Remac Realty on behalf of the "*applicant*" /investor. It is also noted that the allotment of preferred option of county club membership or the property, as the case may be, is at Remac Realty's sole discretion and availability at any point of time. This shows that Remac Realty is in complete control of the schemes and the '*applicants*'/investors do not have any say in the operation of the schemes/ arrangement. Therefore, it is clear that the "*applicants*" /investors do not have any day-to-day control over the management and operation of the said schemes/ plans. I, therefore, find that the instant schemes/plans also satisfies the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

5. From the above analysis, I find that the "*scheme*" /plan offered by Remac Realty with a resultant promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I am of the view that Remac Realty is engaged in the fund mobilizing activity from public, which is in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.
6. In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *PGF Limited Vs. Union of India* [AIR 2013 SC 3702]:

".....Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would

entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time. 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." [Paragraph 52]

6.1 In view of the aforementioned observations of the Hon'ble Supreme Court of India in the PGFL case, and in view of the abovementioned analysis and examination, I find that the activity of fund mobilization by Remac Realty with a resultant promise of returns clearly falls within the ambit of 'collective investment schemes' as defined in Section 11AA of the SEBI Act.

7. I note that Remac Realty in its letter dated October 3, 2013, contended "*...we have started delivering the solar products against the advances received from March'12 and are also in the process of allotting the real estate land parcels from March '14 onwards... the products floated by us do not fall under the SEBI (Collective Investment Schemes) Regulation, 1999*". In this regard, it is observed that merely calling any scheme as a business/transaction of sale and purchase of products/property is not determinative of its nature and character; the same has to be determined with reference to the terms and conditions of such scheme, which express the intention of the parties. In the instant case, the application money collected from the investors by Remac Realty is not towards the sale consideration of any property or products. The said amount is locked in for a specific period agreed upon by the investors and at the end of the term the investors have the option to choose either the allotment of property/club membership/product or refund of the application amount along with the "*credit value*" or "*discount amount*" /assured return. If the investor opts for allotment of property, the final allotment of the property/product or the service shall be at the sole discretion of Remac Realty, subject to availability of the property at the time of allotment and general terms and conditions of the scheme. The agreement also stipulates that the final allotment of the property made by Remac Realty or its group to the investors should be accepted by the investors. The aforesaid application amount collected from the investors would be adjusted against the "*prevailing official selling price*"

of the property and the investor should pay the balance amount of the property for getting the property allotted in his/her name. In the whole scheme, the property has not been distinctly identified by Remac Realty either at the time of execution of the agreement with the investors or at the time issuance of the "*Provisional Allotment Certificate*". This indicates that Remac Realty has no intention to create ownership right or title. In this context, it is pertinent to note that in a real estate purchase/sale transaction, the land, flat etc. are clearly identified by delineating and defining boundaries in the agreement for sale/ development itself, so that the developed land is finally transferred to the individual purchasers in terms of the agreement. In view of the above analysis, it is observed that the afore-mentioned features of the scheme offered by Remac Realty is not akin to or has the characteristics of a real estate purchase/sale transaction as contended by Remac Realty in its letter dated October 3, 2013. Therefore, in my view the fund mobilizing activity of Remac Realty, which is in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act, promising an estimated returns/profit, has been camouflaged as a real estate sale/purchase transaction, only to mislead and attract investment from general public. The '*scheme*' in essence satisfies all the conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.

7.1 As regards, the scheme of "*Advance booking of solar products*", it is observed that one of the "*Terms and Conditions*" of the "*Application Form*" for the advance booking stipulates that on non-acceptance of the product booked, the applicant would be eligible for a refund amount, after the scheme period, which includes the discount amount in the form of returns. This refund amount is termed as "*product card price*". This indicates that Remac Realty is offering an assured return/profit over the investment collected from the "*applicants*"/investors. Neither the "*Application Form*" nor the "*certificate*" issued to the "*applicant*"/investor, after booking the product, contain any details or specifications of the solar product booked by the "*applicant*"/investor. From the details regarding the funds raised by Remac Realty against advance booking in respect of the aforesaid schemes, furnished by Remac Realty vide its letter dated October 3, 2013 to SEBI as reproduced in Paragraph No. 3(xi) above, it is noted that Remac has collected an amount of ₹28.80 crores towards the scheme of "*Advance booking of solar products*". However, the fund deployment details furnished by Remac Realty, vide the same letter

does not contain any details showing that the amount collected from the investors have been deployed/ utilized for the purpose of manufacture/ purchase of the solar products. No materials/ documents have been furnished by Remac Realty regarding, its sale/ manufacture of solar products or the delivery of solar products to the "applicants"/ investors. It is also noted from the aforesaid the fund deployment details furnished by Remac Realty that out of ₹62.93 crores collected from the investors against various schemes, an amount as high as ₹49.23 crores, *i.e.* more than 78% of the total amount collected has been spent by Remac Realty under "Administration Overheads". In view of this, I am of the opinion that the submissions made by Remac Realty that it is conducting sale/ purchase transaction of solar products and that it has started delivering the solar products against the advances received from March 2012, are not borne out of facts and hence not acceptable.

8. I note that in terms of Section 12(1B) of the SEBI Act, "no person shall sponsor or cause to be sponsored or *cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations*". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**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 'collective investment scheme'. Therefore, a person can launch or sponsor or cause to sponsor a 'collective investment scheme' only if it is registered with SEBI as a Collective Investment Management Company. In view of this, 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.

- 8.1 Upon a consideration of the aforementioned paragraphs, I find that the "scheme"/ plan offered by Remac Realty by way of its sale and purchase of property/ product/ service is nothing but a smokescreen for its fund mobilizing activity. I am of the *prima facie* view that Remac Realty is engaged in fund mobilizing activity from the public, by floating/ sponsoring/ launching 'collective investment scheme' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and the CIS Regulations. Considering the fact that

no prior registration was obtained by Remac Realty in respect of the aforesaid activities in the nature of '*collective investment scheme*', I am of the view that Remac Realty is illegally mobilizing funds from the public, which *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.

9. Protecting the interest of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. I, therefore, note that Remac Realty has to be prevented from carrying on with the '*collective investment scheme*' activities without due registration from SEBI as required by law. It is further noted that Mr. Partha Pratim Tewari, Mr. Arnab Roy, Mr. Ganesh Kumar Bagaria, Ms. Leena Tewari, Ms. Reena Vijay, Mr. Sandip Chattopadhyay and Mr. Debapratim Mazumder are the Directors of Remac Realty.
10. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct **Remac Realty India Ltd.**, and its Directors *viz.* **Mr.Partha Pratim Tewari, Mr.Arnab Roy, Mr.Ganesh Kumar Bagaria, Ms.Leena Tewari, Ms.Reena Vijay, Mr.Sandip Chattopadhyay and Mr. Debapratim Mazumder**
 - a. *not to collect any money from investors from its existing "schemes"/plans or to launch any new "scheme"/plan;*
 - b. *to immediately submit the full and detailed inventory of the assets owned by Remac Realty out of the amounts collected from the "applicants"/investors under its existing "schemes"/plans;*
 - c. *not to dispose of any of the properties or alienate the assets of the existing "schemes"/plans;*
 - d. *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*
 - e. *to furnish the following information with regard to its various "schemes"/plans, including the scheme for advance booking of solar products,*
 - i. *scheme-wise list of "applicants"/investors, their contact numbers and addresses along with the details of amount mobilized and refunded till date.*

- ii. separate list of the "applicants"/investors, their contact numbers and addresses, who have, opted for the delivery of solar products and list of the "applicants"/investors who have availed the refund facility offered by Remac Realty, along with the list of solar products delivered by Remac Realty, till date,*
- f. details of expenditure incurred under the head "Administration Overheads" (mentioned in the Paragraph No. 3.1 (xi) of this Order), duly certified by an auditor.*

11. The above directions shall take effect immediately and shall be in force until further orders.
12. This order is without prejudice to the right of SEBI to take any other action that may be initiated against Remac Realty and its Directors, in accordance with law.
13. The *prima facie* observations contained in this Order are made on the basis of the material available on record. Remac Realty and its aforesaid directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to the *prima facie* observations made herein. Remac Realty and its aforesaid directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai
Date: July 15, 2014