

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 Viswas Real Estates and Infrastructures India Limited and its Directors viz., Mr. Vaka Saradhi (DIN- 02696050) and Mr. Eshararao Gundala (DIN- 06773429).

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated March 6, 2014 against Viswas Real Estates and Infrastructures India Limited (hereinafter referred to as ‘**VREIL**’) alleging that VREIL collected an amount to the tune of ₹30 Crores from the public under the ‘*Viswas Own Your Lumpsum Property Advance Scheme Agreement Bond (OYPAS) Monthly Plans*’ in a deceitful manner, misappropriated the same and cheated the investors by not making repayment of the amount to its customers/investors. Prior to this, the complainant had sent brochures of the schemes launched by VREIL, copies of agreements entered into by VREIL with its investors and sample copy of Simple Mortgage Deed entered into with the investors.
2. As a matter of preliminary inquiry into whether or not VREIL is carrying on activities of ‘*collective investment scheme*’, in terms of Section 11 AA of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) vide letter dated February 13, 2014, SEBI advised VREIL to furnish/explain the details pertaining to the schemes operated by it within ten days of the receipt of the said letter. However, the letter was returned with the remark ‘*shifted*’. Prior to the receipt of the returned envelope, a reminder letter dated March 4, 2014 was sent to VREIL. However, the same was also returned undelivered. Thereafter, the addresses of VREIL and the Directors were obtained from the *MCA21 portal* and vide letter dated March 7, 2014, VREIL and the Directors were advised to furnish the details of the schemes by March 14, 2014. However, the letters addressed to the directors were returned with the remark “*shifted*”. It is noted that the said letter addressed to the

Director, Mr. Eshararao Gundala received by SEBI with signature on the acknowledgement card. However, no reply has been received from Mr. Eshararao Gundala till date. As regards SEBI's letter to VREIL sent via registered post with acknowledgment due and courier returned undelivered with the remarks '*addressee shifted*'.

3. I have carefully considered the materials available on record such as complaint dated March 6, 2014, the documents in relation to the schemes launched by VREIL forwarded by the complainant viz., details of the schemes launched by VREIL as per the brochures, terms and conditions mentioned in the agreement entered into with the investors and the information gathered from *MCA21 Portal* and the publicity materials then available on the VREIL website. In this context, the issue for determination is whether the mobilization of funds by VREIL under its schemes fall under the ambit of '*collective investment scheme*' provided in Section 11AA of the SEBI Act.
4. On an examination of the material available on record, it is *prima facie* observed that:
 - a) VREIL(CIN: U70100TG2010PTC070972) was incorporated on October 27, 2010 having its registered office at Plot No. 142 BD, 142 A, Shop No.3, Balaji Commercial Complex, Bhagyanagar Colony, Opp. KPHB Colony, Hyderabad. Its Directors are Mr. Vaka Saradhi and Mr. Eshararao Gundala.
 - b) As per Clause 1 of the terms and conditions mentioned in the agreement of *OYPAS Plan*, it is noted that VREIL is engaged in the business of marketing and selling of plots, sites, estates, plants and other related products.
 - c) It is noted from the brochure that VREIL has launched *Viswas Own Your Property Advance Scheme Monthly Plans 9,10,11&12 ("OYPAS")*, *Lumpsum Property Advance Schemes ("LPAS") Plans 13(Silver),14(Gold),15(Diamond)*, *LPAS-MIS Platinum Plan-16 and Own Your Property Advance Scheme(Daily) Plans 17 & 18*.
 - d) The aforesaid plans are available for different time periods as per the customers' requirements i.e. *OYPAS monthly plans* are available for one year, two years, four years and five years upon a payment of minimum monthly instalment of ₹ 500/- upto a maximum amount of ₹2000/-. The details of the Plan offered by VREIL under its *OYPAS monthly plan* for one year is tabulated as under :

PLAN-9 OYPAS for 1 year				
Monthly Installment (Rs.)	Total Property Advance Paid	Estimated Compensation Value (ECV)	Refund Amount with ECV (after 1 year)	Life Risk Coverage
500	6000	600	6600	6600
1000	12000	1200	13200	13200
1500	18000	1800	19800	19800
2000	24000	2400	26400	26400

- e) It is noted from the above table that the customer pays a monthly instalment of ₹500/- which at the end of the year becomes ₹6,000/- which is the total property advance paid. On this amount, the estimated compensation value (ECV) is ₹600/- and thus, the refund amount with ECV after one year is ₹6,600/-. On receipt of the total advance amount, VREIL executes simple mortgage deed (without possession) in favour of the investor. VREIL also offers insurance coverage in conjunction with its schemes .
- f) It is noted from the schemes of *LPAS silver, gold and diamond plans* of VREIL involve higher amounts. The details of the schemes under *LYPAS* are tabulated as under:

PLAN -13 (Silver Plan 3 years)			PLAN-14 (Gold Plan 4 years)			PLAN-15 (Diamond Plan 7 years)		
Lumpsum Payment (Rs.)	Refund after 3 yrs with Compensation	Life Risk Coverage	Lumpsum Payment (Rs.)	Refund after 4 yrs with Compensation	Life Risk Coverage	Lumpsum Payment (Rs.)	Refund after 7 yrs with Compensation	Life Risk Coverage
5000	7700	7700	5000	10000	10000	5000	15000	15000
10000	15400	15400	10000	20000	20000	10000	30000	30000
20000	30800	30800	20000	40000	40000	20000	60000	60000
25000	38500	38500	25000	50000	50000	25000	75000	75000

- g) It is noted that upon receipt of an application along with the property advance paid as per the Plan opted by the investor/purchaser, VREIL enters into an agreement with the investor/applicant. The following terms and conditions are noted from the agreement entered into with the investors of OYPAS plan offered by VREIL :
- (i) *The customers can obtain a plot against the property advance in any of the divided property of the Viswas group of ventures as per the layout provided by the company at the end of the plan period. The cost of the property will be decided as per the*

selection of the land, actual size and location. If there is any price variation, the difference amount is levied/ refunded as the case may be.

- (ii)** *There is no pre-closure facility available for the customers, viz., the customer can withdraw the amount only after the end of the plan period.*
- (iii)** *On non-receipt of the total sale consideration, it will be treated as wilful breach of agreement/MOU/commitment as the case may be, by the prospective customer and the proposed estate/land/plot etc., will be sold /transferred to a new customer/prospective customer without any intimation to the defaulter/customer and the amount which was paid by the defaulter will be refunded by the company after 30 days from the expiry of the due date of last instalment/plan period as noted on the application after deducting the documentation charges, survey charges, other incidental/ processing charges etc.*
- (iv)** *In case of death, any type of applications for refund of property advance by nominee will be processed within 30 days from the date of receipt at the corporate office and no ECV will be paid during this period.*
- (v)** *The estimated compensation value (ECV) can be collected by cash/cheque from the respective branches of VREIL or to opt for fund transfer to the bank account of the purchaser.*
- (vi)** *There shall be bilateral contract between the company and the customers. VREIL's interpretation of the terms and conditions shall be final.*
- (vii)** *VREIL reserves the right to reject the applications without assigning any reasons thereof.*
- (viii)** *All the payment will be made by VREIL by way of account payee cheque/Demand draft only on receipt of original agreement and other necessary forms duly signed and witnessed.*
- (ix)** *Migrations of plans will not be accepted.*
- (x)** *VREIL reserves the right to alter or amend any/all the terms and conditions stipulated without assigning any reason thereof and without any notice.*
- (xi)** *For conversion of land into residential areas, approval will be obtained before the end of the project period. VREIL will obtain the same from the concerned agency/department/authority before registration. However, VREIL will not accept any responsibility for any eventual delay occurring in this regard.*

(xii) *VREIL reserves its right to refund the amount without compensation whatsoever by terminating the agreement/contract, if it is satisfied that it is necessary or expedient to do so or if the circumstances so warrant at any time before registration of the property.*

h) VREIL is also providing a collateral security to the investors/ applicant/ customers who invest in their schemes. The same reads as under :

" collateral security per every Rs. 100/- for one square yard of land situated under.....village.. which is acquired by the company stands as collateral security for the customer id.... name....equivalent to the value of amount paid Rs. 5,00,000/- (five lakhs only) and the value of the property offered by the company to the above mentioned customer id is 5000 sq.yards."

5. The above mentioned features of the OYPAS and LPAS plans offered by VREIL have to be considered in light of the provisions 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 sub section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,

(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;

(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."

6. In the context of the abovementioned Section 11AA of the SEBI Act, the scheme of OYPAS and LPAS Plans offered by VREIL 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'

VREIL has launched various property advance plans such as *OYPAS for 1 year, 2 years, 4 years, 5 years and LYPAS silver plan of 3 years, gold plan of 4 years, diamond plan of 7 years etc.*, inviting investment from public. The contribution or investment made by the investor/purchaser is in accordance with the various payment schedules offered under the said plans for different time periods in the form of equal instalments or lump sum payments. The payment is stated to be utilised for the purchase of plot of land of varying sizes; however, it is noted from the terms and conditions of agreement of *OYPAS Plan* that the investor/purchaser is not provided with the identification of the property as the plot is stated to be "*in any of the divided property of the Viswas group of ventures*". As noted from the Clause 15 of the said agreement, VREIL undertakes to convert such plots of land purchased into residential areas under the plans subject to approval from the concerned authority. In view of the aforesaid, it can be concluded that the contributions or investments received from the investor/purchasers are pooled and utilized for the purpose of the said plans and hence, the *OYPAS and LPAS plans* offered by VREIL satisfy 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 noted from the brochures of VREIL that if an investor/customer opts for monthly instalment of ₹500/- in *OYPAS Plan* for a period of one year, which at the end of the year becomes ₹6,000/- as advance paid. On this amount, the estimated compensation value (ECV) is ₹600/- and thus, the refund amount with ECV after one year is ₹6,600/-. Similarly, if the investors/customers opt for *LPAS Diamond Plan* for a period of seven years, the minimum amount to be invested in lump-sum is ₹5,000 and the refund on maturity offered by VREIL is ₹15,000/-. The scheme also has a life risk coverage of ₹15,000/-. It is noted from the documents furnished by the complainant who had invested in the various schemes of VREIL that the contribution made by him towards the advance amount, 5,000 square yards of land was offered as collateral security. It is alleged by the complainant that VREIL has not paid the expected returns till date. In view of above, it is clear that the contributions or investments are made by the investor/purchaser under the *Plans* with a view to receive profits or returns. Hence, I find that the instant scheme of VREIL satisfies the second condition stipulated in Section 11AA(2) of the SEBI Act.

- (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'***

It is noted that under the said plan, the investor/purchaser is promised either a plot of land or "*refund the invested amount with estimated compensation value (ECV)*". I find from the Clause 2 of the terms and conditions of the agreement and the receipts given to the Complainant that the investor/purchaser is not provided with details in respect of the plot of land purchased and supposed to be allotted by VREIL in future. Clause 15 of the terms and conditions of the agreement states "*for conversion of land into residential areas, approval will be obtained before the end of the project period. VREIL will obtain the same from the concerned agency/department/authority before registration*". It clearly indicates that the development plot of land and the management of the funds solely vest with VREIL. The contributions or investments is managed and utilized by VREIL on behalf of the investors/purchasers. From the terms and conditions of *OYPAS plan*, it is clear that VREIL has sole and unfettered powers to manage the affairs of its schemes and the investors do not have any say whatsoever.

It is noted that since VREIL manages the contribution or investment on behalf of the investors/purchasers, they do not have any say in the management and operation of such scheme/plans. The investors/purchasers do not participate in the development and management of the plot of land neither they have accessibility to such plots of land, which are not identified or allotted to the investors even after payment of consideration. As per the Clause 17 of terms and conditions of the agreement of *OYPAS Plan* it is noted that VREIL *reserves the right to refund the amount without any compensation whatsoever by terminating the contract, if it is satisfied that it is necessary or expedient to do so or if the circumstances so warranted at any time before the registration of the property*. In view of these facts and circumstances, I find that the scheme of *OYPAS and LPAS Plans* offered by VREIL satisfies third and fourth conditions stipulated in Section 11AA(2) of the SEBI Act.

7. On an examination of the aforesaid materials available on record, it is prima facie observed that all the characteristics of a 'collective investment scheme' are found in the *OYPAS Plans* offered by VREIL. In this context, it may be relevant to refer to the observations made by the Hon'ble Supreme Court of India in *P.G.F. Limited & Ors. Vs. UOI & Anr.* (MANU/SC.0247/2013), wherein it was stated: "...sub-section (2) of Section

11AA, 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 therefrom."

8. The activity of VREIL in mobilizing funds from investors and promising plots of land in VREIL's real estate ventures are part of the scheme/arrangement under its *OYPAS and LPAS Plans*, as discussed in the preceding paragraphs, *prima facie* fall within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.
9. 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") also prohibits carrying on CIS activities without obtaining registration from SEBI. 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. In this regard, I note that VREIL has not obtained any certificate of registration under the Regulations for its fund mobilizing activity from the public, under its *OYPAS and LPAS plans* as aforesaid.
10. I also find that the fund mobilizing activity of VREIL through its "*OYPAS and LPAS plans*", *prima facie*, amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").
11. It is noted that VREIL was advised to respond to the preliminary inquiry conducted by SEBI vide letter dated February 13, 2014 and reminders dated March 04, 2014 and March 07, 2014. However, VREIL failed to furnish the details of scheme as sought by SEBI. Though SEBI's letter was acknowledged by one of the Directors viz., Mr. Eshararao Gundala, it has been returned. This appears to be a deliberate attempt to avoid furnishing the details to SEBI. In these circumstances, I find that reasonable opportunity

has been afforded to VREIL to respond to SEBI. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information with respect to its schemes to SEBI is nothing but an attempt to conceal the true nature and operation of the fund mobilizing activity of VREIL. Further, it is also noted that there is no element of certainty in the transactions executed by VREIL. The terms and conditions of the said plans appears to be extremely one sided to the detriment of its investors/purchasers.

12. Protecting the interests of the investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure that only legitimate investment activities are carried on by VREIL and no investors are defrauded. From the *MCA21 portal*, it is observed that Mr. Vaka Saradhi (DIN-02696050) and Mr. Eshararao Gundala (DIN-06773429) are the Promoters / Directors/ persons in charge of the business of VREIL. Further, in order to safeguard the assets/property acquired by VREIL and its Promoters/Directors using the funds collected from the investing public until full facts and materials are brought and final decision is taken in the matter, it is incumbent on SEBI to take preventive action by way of an immediate measure. In the light of the above, I find no other alternative but to take recourse to an interim order against VREIL and its Directors for preventing them from further carrying on with its existing fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.

13. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 (1), 11B and 11 (4) of the SEBI Act read with Regulation 65 of CIS Regulations and PFUTP Regulations, hereby direct VREIL and its Directors viz., Mr. Vaka Saradhi (DIN-02696050) and Mr. Eshararao Gundala (DIN- 06773429) :

- *not to collect any fresh money from investors under its existing schemes;*
- *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 including land obtained through money raised by VREIL;*
- *not to dispose of any of the properties or alienate the assets including land obtained directly or indirectly through the money raised by VREIL;*
- *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of VREIL;*

- *to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*
 - i. Details of amount mobilized and refunded till date,*
 - ii. Scheme wise list of investors and their contact numbers and addresses,*
 - iii. PAN of the aforementioned Directors and*
 - iv. Audited Accounts for the last three years.*

14. The above directions shall take effect immediately and shall be in force until further orders in this regard.

15. This Order is without prejudice to the right of SEBI to take any other action that is deemed fit to be initiated against VREIL and its Directors in accordance with law.

16. The *prima facie* observations contained in this Order are made on the basis of the materials available on record. In this context, VREIL and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai
Date: August 08, 2014

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