

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, 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 Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in respect of Skylark Land Developers and Infrastructure India Ltd. (PAN: AAOC3538A) and its Directors, viz. Mr. Dilip Kumar Jain (PAN: AEUPJ2034B), Mr. Ram Shankar Yadav (PAN: AAUPY1604L), Mr. Durga Prasad Yadav (PAN: ABAPY8539M), Mr. Jaihind Kumar (PAN: ALAPK2141F), Mr. Anand Kumar Gupta (PAN: AOKPG3680A) and Mr. Santosh Kumar Pandey (PAN: ALZPP4993M).

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a letter dated September 21, 2012 from Department of Financial Services, Ministry of Finance enclosing an Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of *Dharmvir Singh and Anr. Vs. Union of India & Ors. [Writ petition No. 3332 of 2010 (PIL)]*. From the aforesaid order, it was observed that –

- i. *The Petitioners therein had filed a Public Interest Litigation (PIL) in 2010, seeking order of enquiry against various companies including M/s Skylark Land Developers & Infrastructure India Ltd. (hereinafter referred to as "the company"/"Skylark Developers"), alleging that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by these companies, under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest from 15%-20%.*
- ii. *The Hon'ble High Court vide order dated July 5, 2011, directed the Central Bureau of Investigation ("CBI") to conduct the preliminary investigation regarding the activities of such companies and to file a Report. As per the said directions of the Hon'ble Court, CBI filed its final "Status Report" before the Hon'ble Court on January 13, 2012.*



iii. *The Hon'ble Court, inter alia directed that copy of the said Order be forwarded to the various authorities including SEBI to take appropriate action in accordance with law.*

iv. *The Hon'ble High Court, also advised the authorities to consider the aforesaid Report filed by CBI in respect of the activities of the companies including Skylark Developers.*

2. As a matter of preliminary inquiry into the alleged mobilization of funds by Skylark Developers, SEBI, vide letter dated November 22, 2012, *inter alia* sought the following information in relation to its business activities:

- a. Memorandum and articles of Associations of the Company as filed with the Registrar of Companies.
- b. Details of the past and present directors of the company including details of name, address, PAN and contact details (Email/fax/contact no.) of the directors.
- c. Brochures pertaining to the schemes/ offers which were made available to the public.
- d. Copies of applications forms that are required to be submitted by investors/applicants to participate in the schemes.
- e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes.
- f. Sample copies of the agreement letter/ contract required to be entered into by investor/applicant under these schemes.
- g. Details of the scheme wise amount mobilized by the company till date along with the number of investors under the schemes.
- h. Certified copy of audited financial statement for the FY 2009-10, 2010-11 and 2011-12.
- i. Copy of Income Tax Return filed by the company for the last three years.
- j. Details of any other similar scheme(s), if any, floated by the company or its group/associates company.



2.1 The said letter was acknowledged by the company. Subsequently, Skylark Developers vide its letter dated December 05, 2012, by stating that the company has not mobilized funds from public, sought 2 months time for furnishing the desired information. In response, SEBI, vide letter dated January 11, 2013, advised Skylark Developers to provide the desired information/documents by January 20, 2013. However, the said letter was returned undelivered with the remarks "left".

3. CBI, vide letter dated October 23, 2013, forwarded a copy of the aforesaid "Status Report" filed by them before the Hon'ble High Court of Madhya Pradesh, to SEBI. The important findings/observations of the CBI in respect of Skylark Developers were as under:

- (i) *The company came into existence on 2nd June 2010 and has its operations all India with offices at Gwalior, Delhi, Allahabad, Jaunpur, Pratapgarh, Banaras, Agra, Bhiwara, Surat and Vadodra.*
- (ii) *It was also stated that the company is presently having approximately 59 Bighas of land in and around Gwalior. The company had undertaken an agreement for another 90 Bighas of land at Gwalior district but since the company's office at Gwalior was sealed on 5th May 2011, the sales deed of the same could not be executed.*
- (iii) *During enquiry, one more complainant who had filed the refund claim against the company with District Collector was examined. He submitted that he had taken a RD on installment with the company and he was only informed that the plan was a simple investment plans that on completion of the plan, he will be getting the agreement upon amount as mentioned in the certificate issued by the company.*
- (iv) *The genuinity of the sale deed in respect of the land owned by the company was verified from District Collector Gwalior and it was found that the said land is in possession of the company but is underdeveloped.*
- (v) *It was found that the company has its branches at 9 places viz. Gwalior, Gorakhpur, Varanasi, Jaunpur, Bhind, Mirjapur, Bhadoi, Sabalghar and Allahabad. The details of the customers, the plans under which the customers were issued certificates and the land issued to them could not be ascertained. The business report seized, revealed the*



collections at Gwalior from 29.08.2010 to 30.4.2011, at Gorakhpur from 05.3.2011 to 25.4.2011, at Varanasi from 08.6.2010 to 31.3.2011, at Jaunpur from 07.3.2011 to 31.3.2011, at Bhindd from 06.9.2010 to 23.2.2011, at Mirjapur from 07.2.2011 to 29.3.2011, at Bhadoi from 10.1.202011 to 28.2.2011, at Allahabad from 01.3.2011 to 31.3.2011 and Sabalgarh from 15.10.2010 to 14.2.2011. This means that the offices (Customer Service Centre) at all these places had started in either second half of 2010 or in 2011. The company has come into existence in June 2010 only and was sealed in May 2011 and was having 59 Bighas of land in its name before the initiation of its first agreement.

4. Subsequently, SEBI examined the details of Skylark Developers available on the MCA website and based on the information received from the website, including the details regarding the registered office of the company and details of its directors, SEBI issued another letter dated November 07, 2013 to Skylark Developers seeking the aforesaid information/documents. Copies of the said letter were also forwarded to its directors. The letters sent to Skylark Developers and one of its directors, Mr. Dilip Jain were returned undelivered and the letter sent to the director, Mr. Rama Shankar Yadav was acknowledged. The letters sent to the remaining directors were delivered, however, no reply was received from them.
5. In view of this, SEBI contacted the auditor of Skylark developers, Mr. Ravi Choudhary and Associates for latest address of Skylark Developers. Subsequent to this, SEBI received an e-mail dated February 20, 2014 from Mr. Sanjay Jain, who claimed to be an official of Skylark Developers, informing about the address of the company, which is same as that of registered office. Subsequently, SEBI sent a letter dated February 20, 2014 to the company and its directors advising them to submit the reply to the earlier letters sent by SEBI, seeking the relevant documents/information in respect of the business activity of Skylark Developers. The copy of the said letter was also sent to the e-mail address *skylark2010gwalior@gmail.com*.
- 5.1 In response to this, Skylark Developers, vide e-mail dated February 28, 2014, sought additional one weeks time for reply. The same was duly allowed by SEBI on the same date (via e-mail).



6. SEBI received an e- mail dated April 03, 2014, enclosing soft copy of the letter dated April 02, 2014 from Skylark Developers. In the said letter Skylark Developers stated as under:

- They are in business of purchase and sale of agriculture land and its development for a period of 5 to 10 years
- The company receives the applications from customers/investors for purchase and development of agricultural land. Under the agreement, customer can make cash down payment or can pay the consideration in installments.
- The company has to transfer the land by executing the sales deeds in favour of customers. The company does not promise assured return.
- The activities of the company does not come under purview of Collective Investment Schemes of SEBI.
- The business of purchase and sale of agricultural land and its development comes under Entry 18 of list II of Seventh Schedule of the Constitution of India.
- All the four provisions of Section 11AA of SEBI Act are not collectively attracted in the case of the company.
- The case against the company filed by Gwalior Police is pending before Session Court (Special Court) in Gwalior.

7. Skylark Developers failed to provide any documents/information sought by SEBI. In view of this, SEBI made several attempts to contact Skylark Developers and its directors vide several letters and e-mails. Letters were sent to the address of the Company as available in its website. However, no reply was received from them. Even the letter sent to the registered office of the company was returned undelivered.

8. In the meanwhile, SEBI, vide letters dated February 07, 2014, June 27, 2014 and June 06, 2014 (with a copy to Chief Secretary of Madhya Pradesh) requested the Collector, Gwalior to provide access to the records of Skylark Developers, which were in custody of the Collector. However, SEBI has not been able to obtain the requisite details, till date.



9. In view of the non-cooperation of Skylark Developers and its directors, SEBI ordered a formal investigation into the matter on July 24, 2014. Accordingly, summons dated July 30, 2014 was issued to Skylark Developers and its directors for production of documents latest by August 07, 2014. In response to this, SEBI received an e-mail dated August 16, 2014 from *skylark2010gwalior@gmail.com* enclosing therewith unsigned letter seeking additional time to prepare the required documents. It was also stated that the directors shall be personally present at the office of SEBI between September 05, 2014 to September 10, 2014. However, no information was received from the company. Subsequently, another letter dated September 12, 2014 was sent to the company and its directors, giving them one final opportunity to submit the desired information by September 22, 2014. However, the same has not been provided till date.

10. In view of non-submission of desired information by Skylark Developers, an e-mail dated September 10, 2014 was sent to the auditor of Skylark Developers, *viz.* M/s Ravi Choudhary and Associates, Chartered Accountants. In response, the auditor vide letter dated September 17, 2014 provided audit working papers pertaining to Skylark Developers for the year 2010-11 to 2012-13. It was informed that financial statements pertaining to subsequent period is yet to be audited. Following are the information/details provided *inter alia* by the auditors:

- a) Details of Skylark Developers and its Directors/Promoters,
- b) Certified copies (certified by Skylark Developers) of Memorandum and Articles of Association (MoA and AoA),
- c) Details of the places where the company has taken the premises on rent during financial 2012-13,
- d) Certified copy of the Booklet/ "*Application Form cum Agreement*",
- e) copies of "*Registration Certificate*" dated September 13, 2010 and "*Allotment Letter*" dated July 01, 2011 issued by the company to a customer,
- f) Certified copy of application cum agreement,
- g) Sample pamphlet and brochure of the company,



- h) Sample "*Application cum Specimen Signature Card*" of the field associates,
- i) Sample "*Registration Certificate*",
- j) Sample receipts issued by the company,
- k) Details of bank accounts of the company,
- l) Copy of cash balance certificate from the management as on March 31, 2011, 2012 and 2013,
- m) Copies of audited balance sheets as on March 31, 2011, 2012 and 2013,
- n) Details of land purchased during the account year 2010-11, 2011-2012 and 2012-2013 along with the copy of land purchase documents.

11. The documents and material available on record such as, complaints received by SEBI along with the documents contained therein; correspondence exchanged between SEBI and Skylark Developers along with the documents contained therein; the submissions made by Skylark Developers; correspondence exchanged between SEBI and the auditors of Skylark Developers along with the documents contained therein; the copy of the Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of *Dharmvir Singh and Anr. Vs. Union of India & Ors. [Writ petition No. 3332 of 2010 (PIL)]*; "*status Report*" filed by the CBI and the observations made therein etc. have been perused. The issue for determination in the instant matter is whether the mobilization of funds by Skylark Developers is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

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

- a) Skylark Land Developers and Infrastructure India Ltd. (CIN No. U701MP2010PLC023689) was incorporated on June 02, 2010. The Registered Office of the company is at : Ganga Complex, Mall Road, Morar, Gwalior - 474006. The present directors of the company are Mr. Dilip Jain, Mr. Rama Shankar Yadav, Mr.. Durga Prasad Yadav and Mr. Jaihind Kumar . Past directors of the company are Mr. Anand Kumar Gupta (resigned on June 27, 2011) and Mr. Santosh Kumar Pandey (resigned on December 11, 2011)



b) The details of directors and shareholders of the company are below:-

Name of Shareholder	Residence address	PAN	Date of ceasing as director	Present Shareholding
Mr. Dilip Jain	104, Dev Krishna Apartment, Mochi, Oli Nai Sadak, Gwalior - 474 001.	AEUPJ2034B	Present Director	17.65%
Mr. Rama Shankar Yadav	C-8, Near Ram Vatika, Govindpuri, Gwalior (MP) - 474 001.	AAUPY1604L	Present Director	9.80%
Mr. Anand Kumar Gupta	Khawaja Tila, Sabji Bazar, Jaunpur (UP)	AOKP13680A	27/6/2011	9.80%
Mr. Durga Prasad Yadav	Mahewa, Gopalpur, Newdia, Jaunpur - 222 137 (UP)	ABAPY8539M	Present Director	17.65%
Mr. Jaihind Kumar	Vill: Ramraypur, PO: Gangapur, Varanasi - 21 010 (UP)	ALAPK2141F	Present Director	17.65%
Mr. Santosh Kumar Pandey	Vill.: Nahora (Parasaipur), PO: Nahora, Jaunpur-222137 (UP)	ALZPP4993M	11/12/2011	17.65%
Mr. Subhash Kumar Soni	Vill. Post Budwa, The Beohari, District Shahdol, MP.	Not Available	Not a director	9.80%

c) As per the memorandum of association, the main object of the company is to engage as real estate promoters, developers and project management association. The company vide its letter dated August 13, 2013 to the auditors have stated that *"The company is engaged in the business of purchase and sale of agriculture land and its development. The company acquires agriculture land from villagers either directly in their name or by taking possession of the agriculture land after entering into agreement with the villagers for purchase of agriculture land on paying the full amount of consideration to the seller and also getting an irrevocable power of attorney in favour of the representative of the company."*

d) The places where the company has taken the premises on rent during financial 2012-13 are as below:-

(i) Agra branch:- 2nd Floor, Kaveri Centre, Sanjay Place, Agra (UP).



- (ii) Allahabad Branch- 141/C, Malviya Road, Georgetown, Allahabad (UP).
- (iii) Bhilwara branch-Shop No.108 and 109, BTC Complex, Bhilwara (Rajasthan).
- (iv) Chanderpur branch- 3rd Floor, Kamla Nehru Complex, Azad Garden, Chanderpur, Maharastra.
- (v) Delhi branch-Room No. 202A, 202B & 204, 47/21/22, Old Rajinder Nagar, Delhi.
- (vi) Delhi Guest House-6/3, Old Rajinder Nagar, Delhi.
- (vii) Patna branch- Off. No.B 804, Luv Kush Tower, exhibition road, Patna (Bihar).
- (viii) Vadodra branch-Mangaldeep Complex, Alkapuri, Vadodra (Gujarat).
- (ix) Varanasi branch- C33/2, Mohall Chandua, Ward Chetganj, Varanasi (UP).
- (x) Rajkot branch- address not available

e) It is observed from the "brochure" of Skylark Developers (forwarded by the auditor) that: -

- Skylark Developers is engaged in the business of purchase/sale, development and maintenance of agricultural land. Skylark Developers collects money from the public through its various payment plans for the scheme of "purchase/sale, development and maintenance of agricultural land", The plans are broadly divided into,
 - Regular Installment Plan (Plan No. 101 to 107 -period ranging between 3 to 15 years) and,
 - Cash Down payment plan (Plan No. 51to 59 -period ranging between 2 to 15 years)
- A sample of these plans are given below:-

Plan 101 - 36 months (3 years)

Unit	Consideration Value	Instalments				Estimated Realizable Value
		MLY.	QLY.	HLV.	YLY.	
50	5000	140	415	825	1630	6275
100	10000	280	830	1650	3260	12550
150	15000	420	1245	2475	4890	18825
200	20000	560	1660	3300	6520	25100
250	25000	700	2075	4125	8150	31375
500	50000	1400	4150	8250	16300	62750
1000	100000	2800	8300	16500	32600	125500



Plan 52 - 36months (3years)

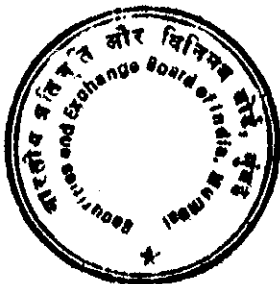
Unit	Consideration Value	Estimated Realizable Value
50	5000	6965
100	10000	13930
150	15000	20895
200	20000	27860
250	25000	34825
500	50000	69650
1000	100000	139300

f) The "customers"/investors who are interested in the aforesaid scheme of Skylark Developers are made to execute an "Application cum Agreement" with Skylark Developers. The application form and agreement to be submitted by the "customer"/investor with the company is in the form of a booklet. The application form contains basic details of the applicant (like name, address etc.), plan details (giving plan number, number of land units, terms of plan, total consideration, lumpsum/regular installment plan, mode of payment), expected realizable value, application charges, expiry date of agreement), payment details etc. From the copy of the "Application Form" dated August 30, 2011 executed by Skylark Developers with a customer/investor (furnished by the Auditor vide letter dated September 17, 2014), it is observed that,

- The investor had opted for 1000 land units of total consideration of ₹1,00,000/- in a 3 years plan, wherein monthly payment is ₹2800/-.
- The "expected realizable value" after the term period is mentioned as ₹1,25,500/-.
- The location of the plot was not mentioned in "Application Form cum Agreement".

i. Following clauses are noted from the "Agreement",

- "WHERE AS SKYLARK is engaged in the business of real estate and Development and maintenance or agriculture land and undeveloped land at various places.



- *WHERE AS SKYLARK organizes the sale of agricultural land of different sizes, to prospective buyers and undertakes the development and maintenance of the same.*
- *WHERE AS SKYLARK is in the process of making arrangement s/ has made arrangements for purchasing /procuring the land, forming part of various plans launched by SKYLARK with clear and marketable titles.*
- *AND WHEREAS THE CUSTOMER ha /have requested SKYLARK to arrange for the sale of the said agricultural land / undeveloped land (hereinafter referred as the said property) in his/ her/ their favour and to develop and maintain the same by rendering various services in accordance with the said plan.*

SALE OF LAND UNITS

- *The customer shall be entitled for allotment of the said property and subsequent transfer of title and possession of the same in his favour by means of a registered sale deed within such period, after receipt by Skylark, of full consideration in case of Cash Down Payment Plans/60% of the consideration in case of installment payment plans,*
- *Skylark shall have the right to develop and maintain the said property in consultation with experts, and customer shall not ordinarily interfere, with the method and mode of development and maintenance of the said property.....*
- *The customer shall pay in aggregate sum of Rs_____ (Rupees _____ only) as per payment schedule of Plan opted for by him towards Consideration for the acquisition sale development and maintenance of the aforesaid property of Skylark and for such allied expenses as my be allocable apportion able or appropriable to the said property.*
- *..... The said property cannot, in any other manner be sold, assigned, mortgaged pledged or alienated without obtaining NO DUES CERTIFICATE from Skylark.....*
- *...To facilitate easy liquidity Skylark provides to customers marketing services for sale of the developed plots....*
- *The title deeds pertaining to the sale of this property shall be kept in the safe custody of the trustee (s) appointed by Skylark The name and address of the trustee (s) shall be informed to the CUSTOMER by the letter of allotment. The CUSTOMER shall have the liberty to verify*



the title deed at the office of trustee (s) during the normal working hours on any working day, after furnishing a formal written request within 15 days in advance."

g) After executing the said agreement, Skylark Developers issues "Registration Certificate" to the "customer"/investor acknowledging the receipt of the payment (lumpsum or installment) as per the plan opted by the "customers"/investors. The "Registration Certificate" contains the following information,

- Details of the customer name/address and other details,
- Registration No. and date of commencement and Plan No. and term,
- Land unit(s) consideration,
- Periodicity and Mode of payment,
- Details of "Assured realizable Value" at the end of term and Date of Realizable value at the end of term,
- Amount of installment,
- Date of last installment,
- Installment due date.

h) It is observed from the terms and conditions (mentioned overleaf) in the "Registration Certificate" that under "Cash Down Payment Plan", the "customers"/investors are generally given "Allotment Letter" within 365 days. Under "Regular Installment Payment Plan", "customers"/investors are given land allotment letters within 90 days on receiving 60% of installments.

i) From the copy of "Allotment Letter" following clauses are noted,

- However, SKYLARK LAND DEVELOPERS & INFRASTRUCTURE INDIA LIMITED reserves the right to change the location of this allotment, and allot you alternate site at the other place.
- The allotment and the subsequent conveyance of the land unit (s) to you shall be only in conformity with the terms and conditions of application and agreement executed by you. A sum of Rs..... (Rupees_____only) _____ by you to SKYLARK LAND DEVELOPERS &



INFRASTRUCTURE INDIA LIMITED under cash down payment plan no. ____ has been appropriated by SKYLARK LAND DEVELOPERS & INFRASTRUCTURE INDIA LIMITED towards the cost which are to be met for procuring the said property and conveying to you developing the same planting the required saplings plants trees crops etc. and other ancillary expenses incidental thereto.

- The sale deed in respect of land unit(s) allotted to you, shall be executed and registered shortly. Where, however, transfer of such ____ land units of land is prohibited by law or other wise not possible /feasible practicable. SKYLARK LAND DEVELOPERS & INFRASTRUCTURE INDIA LIMITED ____ arrange for transfer of title of the said land unit(s) in favour of the customer in joint holding with other like customer. SKYLARK LAND DEVELOPERS & INFRASTRUCTURE INDIA LIMITED shall execute /procure execution of joint sale deed in favour of the said customers (including the customer) conveying the proportionate area of land unit(s) to them. Where the title of land unit(s) is transferred to Customer in joint ____ with other customers by means of joint sale deed, the original sale deed shall be entrusted to custodial services company.....
 - Any dispute or difference whatsoever arising between the parties out of or relating to the construction meaning scope operation or agreement or the validity or the breach thereof shall be referred to any retired judicial officer who shall be appointed SKYLARK LAND DEVELOPERS & INFRASTRUCTURE INDIA LIMITED as the sole arbiter and shall be settled in accordance with arbitration and conciliation 1996".
- j) It is relevant to note that both the aforesaid "Registration Certificate" dated September 13, 2010 and the "Allotment Letter" dated July 01, 2011 (furnished by the Auditor vide letter dated September 17, 2014), are found to have been issued by Skylark Developers to the same customer. Following facts have been noted from the aforesaid documents,
- As per the "Registration Certificate", the customer has made lump sum payment of ₹15,000/- for 3 years ("Cash Down Plan no. 52") with "assured realizable value" /return of ₹20,895/-.
 - The location of plot is not mentioned on the "Registration Certificate".
 - The "Allotment Letter" dated July 01, 2011 issued the customer shows allotment of a 150 sq. ft. land/plot in village Aron, Gwalior (MP).
 - Precise particulars of the piece of land such as *khata/khasra* etc. are not mentioned in the "Allotment Letter", other than the name of the village.



- Interestingly, the said allotment letter also mentions that the company reserves the right to change the location of the allotment.
- The "Registration Certificate" indicates that the customer has been "paid". This indicates that the specific land unit, (the details of which was mentioned in the "Allotment Letter") had not been transferred to the customer, as agreed upon by Skylark Developers in its "Agreement" and "Allotment Letter" (i.e the land would be transferred by way of a sale deed shortly). In the instant case, it is seen that the "customer"/investor has been repaid an amount of ₹20,895/- as the "assured realizable amount/return (as per "Plan No. 52"), as indicated in the "Registration Certificate", after the term period. This is contrary to what has been contended by Skylark in its letter dated April 02, 2014 (Paragraph No. 6 above) that "The company has to transfer the land by executing sale deeds in favour of the customers and the company does not promise assured return".

k) Following are noted from the balance sheets filed by the company, cash balance certificate, details of bank account of the company (furnished by the auditors):

i. Advance from customers:

- As on March 31, 2011 – ₹1,48,46,400/-
- As on March 31, 2012 – ₹2,45,89,704/-
- As on March 31, 2013 – ₹4,29,90,507/-

ii. As per balance sheets, the inventory of the company (in ₹ Cr.) are given below:-

	As at March 31, 2011	As at March 31, 2012	As at March 31, 2013
Opening stock	0	31,38,331	35,72,620
Add purchase during the year	41,83,000	45,78,300	2,85,42,120
Add: Land & site development expenses	32,55,000	45,000	19,52,000
Less: Allotment made during the year	42,99,669	41,89,011	63,60,220
Closing stock	31,38,331	35,72,620	2,77,06,520



- iii. As per the Profit and Loss Account for the year ending March 31, 2011, 2012 and 2013, the commission paid by the company is as under:

	As at 2010-11	As at 2011-12	As at 2012-13
Commission* (in ₹ Cr.)	1,48,65,209	74,98,270	1,03,97,244

- iv. The land purchased and development cost incurred by Skylark Developers during 2010-11, 2011-12 and 2012-13 are as below:-

FY 2010-11

Date	Location of land	Land Size	Purchase cost	Stamp duty & other registration cost	Development cost	Total Cost
3/3/2011	Village:- Aron, Gwalior, MP	6.239htr.	3083000	290000	3090000	6463000
22/3/2011	Village-Bhikanpur, Jaunpur, UP	0.387htr.	750000	60000	165000	975000
	Total		3833000	350000	3255000	7438000

FY 2011-12

Date	Location of land	Land Size	Purchase cost	Stamp duty & other registration cost	Development cost	Total Cost
27/4/2011	Village - Pindara, Varanasi, UP	687.82 sq.mt.	800000	160000	45000	1005000
3/5/2011	Village:- Aron, Gwalior, MP	6.061 htr.	2300000	165000		2465000
18/2/2012	Tehsil-Sadar, Mirzapur, UP	3.389htr.	900000	253300		1153300
	Total		4000000	578300	45000	4623300



FY 2012-13

Date	Location of land	Land Size	Purchase cost	Stamp duty & other registration cost	Development cost	Total Cost
4/4/2012	Village -Ghusuyana, Ward Pargana-Kheragad, Agra, UP	1.6042 htr.	4533000	226650		4759650
18/4/2012	Village-Taku, Tehsil-Itarsi, Hoshangabad, MP	3.069	1743400	109000	330000	2182400
16/6/2012	Mirzapur, UP	10.5810	2190000	365820	605000	3160820
21/6/2012	Tehsil-Madihaan, Village-Gopalpur, Mirzapur, UP	562.178 htr.	6700000	338000		7038000
11/7/2012	Village-Vinjarkhi, Jamnagar, Gujarat	20114 sq.ft.	710000	42050		752050
12/7/2012	Village-Mota Thavarlatal, Jamnagar, Gujarat	1808.34 sq.ft.	68000	4230		72230
23/8/2012	Village -Ghusuyana, Ward Pargana-Kheragad, Agra, UP	1.6042 htr.	4533000	226700		4760700
25/9/2012	Village-Vinjarkhi, Jamnagar, Gujarat	24126 sq.ft.	750000	44660		794660
8/3/2013	Village-Mota Thavarlatal, Jamnagar, Gujarat	30383.95 sq.ft.	1130000	66960		1196960
21/3/2013	Village -Ghusuyana, Ward Pargana-Kheragad, Agra, UP	1.6042 htr.	4533000	226650		4759650
	Village;- Aron, Gwalior, MP	6.061 htr.	In respect of land purchased on 3/5/2011, land development expenses incurred in 2012-13.		652000	652000
	Tehsil-Sadar, Mirzapur, UP	3.389htr.	In respect of land purchased on 18/2/2012, land development expenses incurred in 2012-13.		365000	365000
	Total		26891400	1650720	1952000	30494120

- v. The auditor also provided a certificate issued by the company informing of their bank account as on March 31, 2013:-



Sl. No.	Name of bank	Branch	Bank Account No.	Balance as on March 31, 2013
1	Axis Bank	Lashkar, Gwalior (MP)	910020020367040	1,26,822.04
2	Axis Bank	Lashkar, Gwalior (MP)	911020022463204	50,000.00
3	ICICI Bank	Lashkar, Gwalior (MP)	09705006403	1,10,439.00
4	Bank of Baroda	Industrial Estate, Varanasi (UP)	28560200000486	31,082.00
5	ICICI Bank	Civil lines, Allahabad, UP	628205500233	1,30,075.00
6	ICICI Bank	Sanjay place, Agra, UP	628705010151	65,620.56
7	HDFC Bank	Naraina Vihar, Delhi	20408730000028	1,914.49
8	ICICI Bank	West Patel Nagar, Delhi	033205003526	2,55,638.66
9	ICICI Bank	Nagpur Road, Chanderpur, Maharastra	087005000675	12,409.14
10	ICICI Bank	Vadodra, Gujarat	085505000421	1,90,208.00
11	Vijaya Bank	Sanjay Place, Agra, UP	720000301000013	2,18,890.00
12	ICICI Bank	West Patel Nagar, Delhi	33205003742	29,031.75
Total				12,22,130.08

12. The aforementioned features of the so-called "Sale/purchase, development and maintenance of agricultural land" offered by Skylark Developers 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.

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to 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 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."

12.1 In the context of the abovementioned Section 11AA of the SEBI Act, the "Scheme" offered by Skylark Developers 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.***

As noted from the "brochure", "Application Form", sample "Registration Letter", it is evident that the company is collecting funds from general public towards its scheme for the "sale/purchase, development and maintenance of agricultural land" through various plans as detailed in Paragraph No.11.1 (e) above. It is observed from the balance sheet of Skylark Developers that funds received from investors are pooled together as "Advance from customers". It is important to note that no plot/land is identified and demarcated at the stage when an individual "customer"/investor executes the "Agreement" with Skylark Developers or at the time of issuing "Registration Certificate" by Skylark Developers.

The "Agreement" executed by the "customer"/investor does not specify any time period within which the land/plot is to be transferred, by way of a sale deed, to the "customer"/investor. The agreement states, "in case of Lump Sum Payment Plan, the land shall be allotted [by way of an allotment letter] in the name of customer after receipt of full consideration amount within a period of 365 days and in case of Regular Instalment Plan, after the receipt of 60% of the consideration amount of the plot". The "Allotment Letter" states, "The sale deed in respect of land units(s) allotted to you, shall be executed and registered shortly". The "Registration Certificate" issued to the "customer"/investor does not indicate any specific particulars of the land/plot forming part of the scheme offered by Skylark Developers. An assured amount ("assured realizable value at the end of the term"), which the "customer"/investor is entitled to at the end of the term is mentioned in the said certificate. From this, it is not clear as to when the plot/land would be transferred to



the "customer"/investor (by way of a sale deed), even after paying full consideration amount, in case of single installment plan. It is further noted that even though the "Allotment Letter" issued by Skylark Developers contains the details of a specific plot, as per the clauses mentioned in the "Allotment Letter", Skylark Developers have the right to change the location of the said land stated to have been allotted to the investors and it can allot an alternate site at some other place. This indicates that the so-called "allotment of land" is mere ruse created to show that the company is doing land transactions. This is further substantiated by the facts mentioned in Paragraph No. 11.1(j), wherein a "customer"/investor has been repaid (in cash) by Skylark Developers (i.e, the "assured amount"/profit/return indicated in the "Registration Certificate" issued to her) even after issuing the "Allotment Letter" in favour of the customer.

In view of the aforesaid, it is clear that the instant 'scheme' satisfies the first condition of "pooling of contribution or payments", 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.

The "Registration Letter" issued to the "customers"/investors indicate an "assured amount realizable at the end of the term". From a copy of the "Registration Certificate" issued by Skylark Developers to one of its investors, it is noted that an investor opting for "Plan CDP-52" (cash down payment plan), where the "Land Unit Consideration" is mentioned as ₹15,000/-the investor is entitled to an "assured realizable value" of ₹20,895/- after the term period of 3 years, i.e. he/she is entitled to an amount of ₹5,895/- as profit/return. In view of above, it is apparent that contributions of the "customers"/investors (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive the "assured realizable value", which includes a stipulated return/profit. I therefore, find that the instant scheme satisfies the second condition stipulated in Section 11AA(2)(ii) 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, and*
- iv. *The investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

Following clauses in the "Application cum Agreement" and "Allotment Letter" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by Skylark Developers, 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,

- *"Skylark reserves the right to change the location of this allotment, and allot you alternate site at the other place.*
- *Skylark shall carry out necessary preliminary works by conducting the survey, demarcation, clearing and other related jobs/ works on behalf of the customer.*
- *Skylark shall have the right to develop and maintain the said property in consultation with experts, and customer shall not ordinarily interfere, with the method and mode of development and maintenance of the said property.*
- *The customer shall pay in aggregate sum of Rs.....(Rupees ____only) as per payment schedule of Plan opted for by him towards consideration for the acquisition sale development and maintenance for the aforesaid property of Skylark and for such allied expenses as may be allocable apportionable or appropriable to the said property.*
- *The said property cannot, in any other manner be sold, assigned, mortgaged, pledged or alienated without obtaining No dues certificate from the Skylark in case of Regular installment payment plans."*

The aforesaid clauses indicate that the property, contribution or investment forming part of the scheme, is managed by Skylark Developers on behalf of the investors and the investors do not have day-to-day control over the management and operation of the 'Scheme(s)/ Plan(s)'. In view of the above, I find that the instant 'Scheme'/Plan satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) and (iv) of the SEBI Act, 1992.



13. The aforesaid observations lead to the conclusion that the "scheme" of sale/purchase development and maintenance of agricultural land offered by Skylark Developers with an additional 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. I, therefore find that Skylark Developers 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.

13.1 In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013)*, wherein the Hon'ble Court had occasion to adjudge on a scheme having features similar to the instant Scheme towards "Sale/Purchase, development and maintenance of agricultural land", as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

"A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor concerned.PGFL under the guise of sale and development of agricultural land in units of 150 sq. yards, i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them. 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..... 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. ...



14. In light of the aforesaid observations of the Hon'ble Supreme Court of India in the *PGFL Case*, I find that the fund mobilizing activity of Skylark Developers, under the garb of a real estate business for the sale/purchase, development and maintenance of agricultural land falls squarely within the parameters of the concept of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.
15. 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, 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 the instant case, Skylark Developers has launched '*collective investment scheme*' without obtaining certificate of registration from SEBI, contravening the provisions of section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.
16. It is further noted that Mr. Dilip Jain, Mr. Rama Shankar Yadav, Mr. Durga Prasad Yadav and Mr. Jaihind Kumar are the present directors of Skylark Developers. Mr. Santosh Kumar Pandey and Mr. Anand Kumar Gupta are the past directors of the company. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities Market), 2003. Considering the fact that no prior registration was obtained by Skylark Developers in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that Skylark Developers 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.

17. It is observed that Skylark Developers has failed to submit any of the documents/information sought by SEBI. Skylark Developers has also not complied with the summons issued by SEBI, pursuant to the investigation initiated against it. The non-cooperation on the part of Skylark Developers has seriously delayed the entire investigation process. Failure on the part of Skylark Developers, to furnish the information/documents sought by SEBI not only amounts to non-cooperation with the investigation, violating the provisions of SEBI Act, 1992, but also indicates that the company is concealing the true nature and operation of its fund mobilizing activity.
18. Protecting the interests 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. In order to ensure that Skylark Developers and its directors/promoters do not collect further funds under its schemes and to safeguard the assets/property acquired by Skylark Developers and its promoters/directors from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of an interim measure.
19. In view of the above, I, in exercise of the powers conferred upon me under Section 11(1), 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct Skylark Land Developers and Infrastructure India Ltd. (PAN: AAOC3538A)and its Directors, *viz.* Mr. Dilip Kumar Jain (PAN: AEUPJ2034B), Mr. Ram Shankar Yadav (PAN: AAUPY1604L), Mr. Durga Prasad Yadav (ABAPY8539M), Mr. Jaihind Kumar (PAN: ALAPK2141F), Mr. Anand Kumar Gupta (PAN: AOKPG3680A) and Mr. Santosh Kumar Pandey (PAN: ALZPP4993M):

a. not to collect any fresh moneys from investors from its existing scheme;

b. not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;



- c. *not to dispose of any of the properties or alienate the assets of the existing scheme;*
- 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 immediately submit the full inventory of the assets owned by Skylark Developers out of the amounts collected from the "customers"/investors under its existing schemes;*
- f. *to furnish all the information sought by SEBI(vide letter dated November 22, 2012), within 15 days of the receipt of this Order, including,*
 - i. *scheme wise list of investors and their contact numbers and addresses,*
 - ii. *the details of amount mobilized and refunded till date,*
 - iii. *Sample copies of all the documents pertaining to scheme including the documents/agreements/contracts executed with the "customers"/investors.*

20. The above directions shall take effect immediately and shall be in force until further orders.

21. The *prima facie* observations contained in this Order are made on the basis of the material available on record. This order is without prejudice to the right of SEBI to take any other action that may be initiated against Skylark Land Developers and Infrastructure India Ltd. and its Directors/Promoters in accordance with law.

22. Skylark Land Developers and Infrastructure India Ltd. and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, file their reply, if any, to the *prima facie* observations made herein. Skylark Developers and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: December 15, 2014

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

