

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

ORDER

Directions under Sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 against M/s Sai Prakash Properties Development Ltd. (PAN- AANCS7178R) and its promoter/ directors, Mr. Pushpendra Singh Baghel (PAN-AFZPB0624B), Ms. Pushpanjali Singh Baghel (PAN: AFZPB0557M), Mr. Ranvajay Pratap Singh Baghel (PAN: ATTPB8254D), Mr. Mragendra Singh Baghel (PAN: BKJPB6325H), Mr. Dheerendra Krishan Pratap (PAN: AXMPB0165C), Mr. Sandeep Shankar (PAN: ANPPS8356M) and Mr. Shahendra Singh Baghel (PAN:ATTPB8244M).

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1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received information from Reserve Bank of India (hereinafter referred to as “**RBI**”), on December 12, 2013, regarding fund mobilization from general public by the Company, Sai Prakash Properties Development Ltd. (hereinafter referred to as “**Sai Prakash Properties**”/the company), under the garb of investment in land.
 2. As a matter of preliminary examination into the alleged fund mobilization by Sai Prakash Properties, SEBI examined the details of the company available on MCA website. Based on the information available at the website, including the details regarding the registered office of the company and details of its directors/promoters/share holders, SEBI vide letter dated December 17, 2013, *inter alia* sought the following information from Sai Prakash Properties, in relation to their business activities:
 - a. Memorandum and articles of Associations (MoA and AoA) of the Company as filed with the Registrar of Companies.
 - b. Details (name, address, PAN and contact details (Email/fax/contact no.)) of the past and present directors of the company.
 - c. Brochures pertaining to the schemes/plans, which were made available to the public.

- d. Copies of applications forms that are required to be submitted by investors to participate in the schemes.
- e. Sample copies of the agreement letter/contract required to be entered into by investors under the schemes.
- f. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes.
- g. Details of the scheme wise amount mobilized by the company till date along with the number of investors under the schemes.
- h. Name & address of all investors who invested their moneys with the company.
- i. List of the all branches with their address.
- j. Certified copy of audited financial statement for the FY 2009-10, 2010-11, 2011-12 and 2012-13.
- k. Copy of detailed trial balance from April 2013 till date.
- l. Copy of Income Tax Return filed by the company for FY 2009-2010 till date.
- m. Details of any other similar scheme(s), if any, floated by the company or the group/associates Company or companies in which the company's directors are also directors.
- n. Whether the company/ directors have been charged by Police of any State wherein it operates in respect of complaints made by investors of the company. If yes, the copy of all FIRs, all charge-sheets filed by police and all court order(s) against the company/ directors.

3.1 The copies of the aforesaid letter were also forwarded to the directors of Sai Prakash Properties. The letters sent to the company at its registered office were returned undelivered by postal authorities. Though the letters sent to the directors were not returned back, there was no response to SEBI's letters from them.

4. On January 28, 2014, SEBI received a letter dated January 20, 2014 from RBI enclosing two complaints against Sai Prakash Properties. It is *inter alia* alleged;

- *Sai Prakash Properties is doing investment business in Satna/ Rewa of Madhya Pradesh promising high growth rate,*
- *Sai Prakash Properties is doing investment business similar to PACL.*

4.1 One of the complainants furnished a copy of an application form to be submitted by investor for the “*Joint Ventureship Scheme*” offered by Sai Prakash Properties. RBI in its reference also informed that they have learnt that the company is still mobilizing funds from public in Chhattisgarh.

5. In the meanwhile, SEBI conducted an inquiry in the matter. As a part of this, a SEBI officer, posing as an ordinary investor, visited the office of Sai Prakash group located at 401, 413 Royal World, Sansar Chandra Road, Jaipur, Rajasthan- 302001 (Rajasthan). The officer, submitted the Report on February 04, 2014, wherein it was observed that the manager of Sai Prakash Properties informed that initially they were collecting money for Sai Prakash Properties, but now they are collecting money from investors through their credit cooperative society viz. Chambal Malwa Multistate Credit Cooperative Society Ltd.. The deposits are being collected in terms of daily deposits/ recurring deposits and fixed deposits and offers assured returns.

5.1 Pursuant to this, SEBI examined the website of the Department of Agriculture & Cooperation, Government of India (www.agricoop.nic.in), wherein the list of cooperative societies registered under Multi-State Cooperative Societies Act, 2002 are available. Following were noted from the said website,

- The aforesaid Chambal Malwa Multistate Credit Cooperative Society Ltd. was listed at Serial no. 710 and its office is located at Ward No.25, Gali No. 1, Gayatri Colony, Pink Park, Gwalior, Madhya Pradesh. Its area of operation was in states of Madhya Pradesh, Uttar Pradesh and Rajasthan.
- It has been given registration to act as Multi-State Cooperative Society on January 03, 2013.

6. In view of non-receipt of any reply from Sai Prakash Properties, SEBI visited the website of the Sai Prakash group (www.saiprakashgroup.org). Following are noted from the website,

- On the home page, it was mentioned “*Founded in 2009, under the able leadership of Mr. Pushpindra Singh Baghel, the Sai Prakash group of companies is an eminent business group from Madhya Pradesh.*”

- The website refers to various companies of the group. It also mentions that their head office is at C-177, Sector 63, Noida, Uttar Pradesh.

7. Accordingly, a letter dated February 24, 2014, enclosing a copy of SEBI's earlier letter dated December 17, 2013 and a copy of the application form for the "*Joint Ventureship Scheme*", (received along with the complaints forwarded by RBI mentioned in Paragraph No. 4.1 above) alleged to have been issued by Sai Prakash Properties was sent to the Head Office of Sai Prakash Properties. The copies of the said letters were also forwarded to Mr. Pushpendra Singh Baghel and Mrs. Pushpanjali Singh Baghel, who among themselves hold the entire share holdings of Sai Prakash Properties (as per the details collected from MCA website).
8. Subsequent to this, SEBI received a fax letter dated March 05, 2014 from Sai Prakash Properties, wherein they sought additional time to submit the desired information/ documents. Later, the company vide its letter dated March 18, 2014 provided following information:-
 - (i) Audited financial statement for year ended March 31, 2013.
 - (ii) Provisional balance sheet and Profit & Loss Account as at February 20, 2014.
 - (iii) Investors List as at February 20, 2014.
 - (iv) Details of funds repaid to the investors
 - (v) Bye-laws of the company.
9. In the meanwhile, SEBI received another letter dated April 15, 2014 from RBI-Bhopal, enclosing a copy of the letter sent by RBI-Chandigarh to Punjab Police, informing that a company, *viz.* Thind Finance Ltd. having its address at SCO No. 3, Opposite Paras Down Square, Zirakpur, Dera Bassi, SAS Nagar, Mohali, Punjab is accepting deposits against booking of plots in the name of M/s Sai Prakash Properties Development Ltd. RBI-Bhopal, vide the said letter, requested Punjab Police to conduct investigation into the matter. A copy of the brochure was also enclosed along with the aforesaid letter dated April 15, 2014. The brochure contains the details of single installment payment plans S1 for 66 months, S2 for 90 months, S3 for 108 months, S4 for 60 months. Further, there were installment payment plans M1 New for 66 months, M2 New for 78 months and M7 for 84 months.

9.1 SEBI, via e-mail dated July 20, 2014 requested RBI to provide further details/material in respect of the said company viz. Thind Finance Ltd. In the meantime, SEBI examined the MCA website. As per the details of the MCA website, the directors of Thind Finance Ltd. are Mr. Pushpendra Singh Baghel, Mr. Shahendra Singh Baghel and Mr. Bachan Singh Kuntal. This indicates that Thind Finance Ltd. is a group company of Sai Prakash Properties. Further, it was observed that the name of Thind Finance Ltd., which was earlier appearing in RBI website as a company permitted to accept deposit, is presently, no longer appearing in the list as on June 15, 2014. A clarification was sought from RBI on the same vide e-mail dated July 20, 2014. In response, RBI informed that registration of Thind Finance Ltd. has since been cancelled.

10. In the meanwhile, SEBI received another complaint dated May 15, 2014 against Sai Prakash Group of Companies. The complainant provided the following information about Sai Prakash group of companies:-

- (a) Two companies of Sai Prakash Properties are raising money from public viz. Sai Prakash Properties Development Ltd. and Sai Prakash Organic Foods Ltd.
- (b) The fund mobilization by Sai Prakash Properties from the public are as under:-

S.No	Year	Customer (in Lacs)	Amount of deposit(in ₹ Crs)
1	2009-10	0.21	16.00
2	2010-11	21.00	166.00
3	2011-12	5.43	350.00
4	2012-13	2.91	243.00
5	2013-14	1.39	111.00
Total			886.00

(b) It was also alleged that:-

- i. Company raises fund from public by Multi Level Marketing (MLM) system
- ii. Company distributes around 70% of the fund to their Field Associates and the remaining fund is used for day to day operation.

10.1 The said complainant vide subsequent e- mails, *inter alia* provided the following information:-

- (i) The commission structure offered by the company is as below:-

Plan	RD	FD	MBP
Upfront Commission	25%	10-15%	7%
Monthly Voucher	20%	12%	5%
CMD	10%	7.50%	5%
Promotive Incentive	10%	5.50%	5%
Special Bonanza	10%	5.50%	5%

- (ii) Details of 122 agents/ field staff of Sai Prakash Properties,
- (iii) The complainant provided a list of 21,342 persons (in soft copy) claimed to be investors of the company as on March 31, 2010. It is noted from the list that all the investors except one, have invested during the end of 2009 and beginning of 2010.
- (iv) The complainant provided copies of some circulars of 2013 issued by Sai Prakash Financial Advisory Services P. Ltd., which shows the details of the commission/ incentives, offered to its agents for achieving their targets as prescribed by the Company.
- (v) The complainant also provided copy of some pages of an unsigned agreement on a stamp paper executed between Sai Prakash Properties and Sai Prakash Financial Advisory Services P. Ltd.

11. SEBI ,vide letter dated June 03, 2014 advised Sai Prakash Properties to furnish all the desired information sought by SEBI. After consistent follow-up, the company vide letter dated July 09, 2014 and July 14, 2014 gave their replies. Later, further clarifications were sought from the company vide letter dated July 21, 2014. The same were provided by the company vide letter dated August 02, 2014. Following are the information/documents furnished by Sai Prakash Properties, vide their aforesaid letters:

- (a) Copy of the MoA of the company
- (b) *Brochure* containing the schemes of the company. ,

- (c) A sample copy of a booklet containing “*Customer Application Form*”, “*Agreement for Joint Venture Association*” and “*Allocation Letter*”
- (d) Sample copy of “*Certificate*” issued by the company to the investors.
- (e) Scheme-wise amount mobilized by the company till date,
- (f) A *C.D.* containing the list of investors
- (g) List of their 98 branches of the company operating across India
- (h) Copy of an FIR No.84 (7) of 2013 filed against Sai Prakash group on May 15, 2013 in Police Station Nuapada, Oddissa.
- (i) Copies of balance sheets of the company as on March 31, 2010, 2011, 2012 and as on March 31, 2014 (provisional)

11.1 Vide the aforesaid letter, Sai Prakash properties also informed that,

- Out of the funds collected from the investors, ₹ 49.42 crores were utilized for investment in Sai Prakash Telecommunications and the balance amount has been invested in various properties.
- Title of none of the properties was transferred in name of investors.
- The details of the commission paid by the company till 2013-2014.
- Similar schemes are floated by their group concern Sai Prakash Organic Foods Ltd.

12. The documents and material available on record such as, complaints received by SEBI along with the documents contained therein; correspondence exchanged between SEBI and Sai Prakash Properties along with the documents contained therein; the submissions made by Sai Prakash Properties; correspondence exchanged between SEBI and RBI along with the documents contained therein, etc. have been perused. The issue for determination in the instant matter is whether the mobilization of funds by Sai Prakash Properties is a ‘*collective investment scheme*’ in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”).

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

- i. Sai Prakash Properties Development Ltd. (CIN No.U45200MP2009PLC022758) was incorporated on December 03, 2009. The Registered Office of the company is at: Plot

No. 60, Dwarika Dham, Jail Road, Bhopal, Madhya Pradesh-462030. The paid up capital of the company is ₹ 5,00,000. The details of the directors of the company are:-

Serial No.	Name of the Directors	Address	Date of ceasing as director
1.	Mr. Ranvajay Pratap Singh Baghel	Semarpakha Pondi, Beohari, Shahdol, 484774, Madhya Pradesh	Present Director (from March 15, 2011 onwards)
2.	Mr. Mragendra Singh Baghel	103, Semarpakha, gram. Reusa Tehsil, Beohari Shahdol, 484774, Madhya Pradesh	Present Director (from March 15, 2011 onwards)
3.	Mr. Dheerendra Krishan Pratap	103, Semarpakha Redasa, Byaahari, Shahdol, 484775, Madhya Pradesh.	Present Director (from March 15, 2011 onwards)
4.	Mr. Pushendra Singh Baghel	B -60, Sector-44, P.S. Sector 39, TehsilDadri, gautam Budh Nagar, Noida, 201301 (U.P.)	from December 03, 2009 to June 14, 2011
5.	Mrs. Pushpanjali Singh Baghel	B -60, Sector-44, P.S. Sector 39, TehsilDadri, gautam Budh Nagar, Noida, 201301 (U.P.)	from December 03, 2009 to April 02, 2011
6.	Mr. Sandeep Shankar	24, Mahadev nagar, Ramnagar Extension, NS Road Sodala, Jaipur-302019	from December 03, 2009 to April 22, 2010
7.	Mr. Shahendra Singh Baghel	Semarpakha, Post-Podikala, Tehsil-Beohari, Shahdol-484774 (M.P.)	from April 15, 2010 to March 25, 2011

- ii. Mr. Pushpendra Singh Baghel and Mrs. Pushpanjali Singh Baghel (details of whom were collected from the MCA website), hold the entire shareholding of Sai Prakash Properties.
- iii. As per the memorandum of association, the main object of the company is to carry on, the business of developing residential & commercial properties and the business as promoters, builders, developers, construction and maintenance.
- iv. Sai Prakash Properties collects funds from the public through its various payment plans for their “*Joint Venturship Scheme*”. The funds are collected from the public through its various branches operating across India. As per the details furnished by the company, it has 98 branches across India.
- v. As per the sample copy of the brochure furnished by the Company, the Payment Plans offered by Sai Prakash Properties were,
 - **Installment plans** (“M1 New” for 66 months/ 5 ½ years; “M2 New” for 78 months/ 6 ½ years; “M5” for 72 months/ 06 years; “M-7” for 84 months/ 7 years; “M4A” for 240 months/ 20 years)

- **Single Installment Plans** (“Plan S3” for 108 months/ 9 years; “Plan S4” for 60 months/ 6 years; “Plan S 1” for 66 months/ 5 ½ years and “Plan S2” for 90 months/ 7 ½ years).

A sample of these plans are given below:-

“Plan M1 New” for 66 month/ 5 ½ years

No. of unit	Cost of Plot (Rs.)	Development & Other charges (Rs)	Total Cost (Rs.)	Participation Value				Expected return of participation (Rs.)
				M	Q	Hly	Yly	
0.50	2,160	3,840	6,000	91	270	535	1,065	9,000
1.00	4,320	7,680	12,000	182	540	1,070	2,130	18,000
1.50	6,480	11,520	18,000	273	810	1,605	3,195	27,000
2.00	8,640	15,360	24,000	365	1,080	2,140	4,260	36,000
2.50	10,800	19,200	30,000	455	1,350	2,675	5,325	45,000
5.00	21,600	38,400	60,000	910	2,700	5,350	10,650	90,000
7.50	32,400	57,600	90,000	1,365	4,050	8,025	15,975	135,000

Payment Plan “S4” for 60 months / 5 years

Participation (Rs.)	Expected return of Participation (₹)
6,000	11,000
12,000	22,000
18,000	33,000
24,000	44,000
30,000	55,000
36,000	66,000
42,000	77,000
48,000	88,000
54,000	99,000
60,000	110,000
90,000	165,000

- vi. Sai Prakash Properties offers accidental death compensation (50% of the paid or deposited amount or maximum upto Rs.1,25,000/-)
- vii. It is also noted from another set of brochure (typed) furnished by Sai Prakash Properties, they are offering following plans;
- **Single Installment Payment Plans** (S1 for 66 months, S2 for 90 months, S3 for 108 months, Monthly Income Plan S4 for 60 months)
- **Installment Payment Plans** (M2 for 78 months, M3 for 96 months, M4 for 240 months).

- *Monthly Income Plan* (P1 for 72 months),
- *Yearly Income Plans* (P2 for 72 months, P3 for 72 month)s.

(It is stated in the said brochure that 1 unit is equal to 500 square feet of land).

viii. The “*joint venture customers*”/investors who are interested in the “*Joint Venturship Scheme*” of Sai Prakash Properties are made to execute an “*Application cum Agreement*” with Sai Prakash Properties. The application form and agreement to be submitted by the “*joint venture 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 (Payment Plan number, term of plan, consideration, mode of payment, maturity date, amount of installments etc.).

- Following are some of the clauses noted from the “*Terms and Conditions*” of the “*Application Form*”:

“The Company shall issue certificate on the basis of the Application Form....

Joint venture (s) shall be repaid on maturity of terms only”

- Following are some of the clauses noted from the “*Agreement for Joint Venture Association*”,

“WHEREAS The Company is carrying on business of building & developing residential and Commercial properties and to carry on the business as promoters, builders, developers, construction and maintenance of industrial building, sheds, warehouses, shopping malls, multiplexes, butments and structures and for that purpose undertake development of land; buildings, renovate, enlarge, extend , pull down, re-build and prepare layouts for building and construction activities. To develop, purchase sale, lease out , rent out residential /commercial plots, dealing with objects incidental /Ancillary to the attainment of the main objects as mentioned herein.

WHEREAS The Company is hereby authorized to enter into Agreement to secure the payment of money or receive money by way of Joint Venture or otherwise in such manner as the company may deter mine, and further authorized to invest or otherwise employ the money belonging or otherwise in such manner as the company may determine, and further authorized

to invest or other wise employ the money belonging or entrusted to company in movable or immovable properties or in securities or in such other manner as may be deemed expedient.

WHEREAS The Company has launched various schemes /plans to raise money to secure the payment of money and launch the various plans including the instalment, payment plans described in plan M1, M2 and M3 so also one time payment plan S1, S2 & S3 for various period in pursuance of rules and regulations made thereof including the expected sum payable on expiry of the said term and consisting of the accidental compensations as contemplated in the said plans.

WHEREAS Company is issuing the certificate to enable the company to raising the finance especially described in the plan S1, S2, S3 hereinafter described and the party of the second party came to know about the investment in said plan and agreed to invest in Company & to join him in Joint Venture with a view to carry out and complete the said _____ raising object as joint venture. The party of the second part has number of meeting with Company, discussed the scheme in detailed and other understanding the same fully agreed to enter into this joint Ventureship agreement on the terms and conditions mentioned herein.

The party of the second part have contributed with the Company the sum of Rs._____ onwards Rs. Only of the _____ certificate in category _____ dated _____ and the party of the second work and the amount will be treated as a participation made by him to the company in the participation plans of the company repayable to the party of the second part as per the terms and conditions of the certificate, Rule book & agreement.

That irrespective of the profit and loss suffered by the company, the company hereby undertake and assure to the party of the Second part to pay the amount of investment plans as per the category and on maturity subject to the fulfillment of terms and conditions of the certificate , Rule book & agreement.

That irrespective of the profit and loss suffered by the Company, the company hereby undertake and assure to the party of the second part of pay the amount of investment plans as per the category and on maturity subject to the fulfillment of terms and conditions or as the case may be otherwise.

The company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of the second part will have nonexus right of the share or share capital of the company and its said business and the party of the second part will have onexus right of the shares or share capital of the company or to interfere the company or the management and the policies of the company or / otherwise the board of directors will have sole and absolutely discretionary powers as per the Companies Laws.

All the tangible and intangible assets of the Company including the goodwill, stock in trade, benefit of business license and permits, benefits of contracts entered etc. will be in the name of the company and the property of the company shall be used by the Company exclusively for the

business of the company and the joint/Venture shall have no nexus or right, title and interest in condition therewith.

At the end of maturity period the joint venture will be entitle to withdraw/renew the said certificate amount and the said certificate as per the company's rules and regulations terms, and conditions mentioned in certificate, Rule book & term of this agreement.

That the company has reserved his rights to revival/amendment of this participation of the investment plan certificate as per the rules, regulations and procedures but same shall not affect the investment plan certificates already issued to Associate.

That through this agreement the company has being collateral secured for realization of amount of said plan as greed, issued letter of allocation of land with a ration of Rs.12000/- of participation equal to 500 sqft. Of land depending upon market price land by Ready Reckoner of Government. But this ratio can be changed /altered solely at the discretion of management depending upon promotion the cost /value of land at the time of agreement. Further the company reserves the rights of area of allocation depending upon promotion cost /value of lands at the time of agreement. The company has issued separately the letter of allocation of land annexed here with this agreement.

It is further agreed by and between the parties that in case the company is unable to repay the due return of participation of the plan , that event only the company would help the customer /Joint venture to dispose off the allocated land at the written request of Customer, through process of law.

The Joint Venture shall continue his /its participation till the completion as per the certificate of the investment plans or it by no chance the said investment plan is cancelled for any reason, till the cancellation of such certificates.

It is agreed by between the parties that this agreement for Joint Venture customer and shall not be treated partnership with the company by Joint Venture. Once repayment of participation is made to the customer then this agreement alongwith allocation letter will be automatically canceled.

Once full & Final payment of said certificate is paid to the customer, this joint venture agreement in automatically stands cancelled and said land allocated to the customer, because free from holding of associate and company thereafter has full holding of I and In WITNESS WHEREOF the parties have put their respective hands the day and year first herein above written."

- ix.** An "Allocation Letter" is also issued to the "joint venture customer"/investor, who enters into agreement with the company, which states that the company allocates a piece of land (ratio Rs. 12000: 500 sq. feet. of land). Following are some of the clauses reproduced from the said allocation letter,

"That M/s. _____ company, in pursuant to the Joint Ventureship agreement dated _____ executed in favour of _____ of hereby agreed to indemnity and keep indemnified the joint venture for payment of his investment as per certificate no. _____ dated _____ on its maturities.

That through this allocation letter the company hereby allocates without prejudice to its right the piece of land with the ration of Rs.12,000/- or participation to 500sq.ft. of land i.e. situated at village _____ Tal _____ district _____ state _____ Bears _____ S.no. _____ admeasuring _____ and are which a piece of land bearing no. _____ admeasuring _____ to the joint Venturer :

That the said application letter is issued as a Guarantee /Warrantee /collateral security to repay the amount of said investment plan as per the certificate issued.

That Joint Venture/Associate covenants with company he will not do anything to said piece of land void or avoidable so as to be prevented from recovery of money there under or shall sell, assign, transfer, alienate, leave & license mortgage, create any charge or any encumbrances of whatsoever nature on said piece of land."

- x. Subsequent to this, Sai Prakash Properties issues a "Certificate" to the "joint venture customer"/investor, wherein the details of Reg. No. & Date; Plan No. / term, mode of payment, consideration amount, installment of subscription payable, subscription due date, expected sum payable on expiry of term, date of last payment, expiry date, agency code, name & address of customer, number of units, nominee name & relationship etc. are mentioned. On reverse-side of certificate, general terms & conditions are given. Following clauses are noted from the said certificate and the general terms & conditions mentioned overleaf,

"Certified that the customer described in schedulethe company shall pay in Indian Currency at its customer service centre through Corp. office, the amount due under the certificate"

General terms and conditions

1. *"No lapse : Amount received against discontinued Joint Venture shall be repaid by the company as per Rule Book.*
2. *Special Revival Scheme : A joint Venture discontinued may be revived any time before maturity of term from the date of discontinuation on all application with a nominal "alteration" fee of Rs.100/- (Hundred) alongwith the one installment of subscription. The original date of commencement in this case will be changed and advance to later date, so shall the amount already paid may recover the period*

from the changed date to the date of actual revival of the joint venture in keeping with mode and terms of the said joint venture as special care at the discretion of Management.

3. *The management of Company reserve the right to discontinue /change/amend/modify or alter any of the rules / regulations and plans at any time at its sole discretion with or without any notice.*
 4. *In case of any dispute, the decision of Chairman of Company or any other person(s) nominated by him, shall be final and shall have legal binding on Joint Venture, who shall have no objection to the appointment of any officer's of "Company as the sole arbitrators" For any consequent legal remedy (ies) only competent civil courts as Gwalior shall have jurisdiction to the excludes on of all other courts.*
 5. *The company reserve the right to discontinue /change/amend/modify or alter any of the rules / regulations and payment as specified in Rule Book and introduce new payment plans at any time at its sole discretion with or without any notice for the cause of prospective customers. "*
- xi.** The scheme-wise amount mobilized by the company, as furnished by the company, vide letter dated August 2, 2014 is given below:-

Sl. No.	Plan	Number of investors	Amount deposited (₹)
1	M1	8,007	3,68,51,294
2	M1A	1	90,000
3	M2	8,691	14,40,76,630
4	M2 New	1	27,000
5	M3	282	6,45,955
6	M4	53	3,87,188
7	M4A	2	90,000
8	M5	1	5,800
9	P1A	15	11,28,840
10	P3	3	6,60,000
11	P3-A	6	5,85,000
12	P3A	2	1,50,000
13	S1	41,926	50,98,09,205
14	S2	9,314	15,41,11,000
15	S3	777	1,23,96,000
16	S4	59	19,44,000
		69140	86,29,57,912

- xii.** It is observed from the soft copy (CD) of the list of investors furnished by Sai Prakash Properties, that the company has collected an amount of ₹ 86.29 Cr. from 69,140 investors as “*booking amount*” till November 30, 2011.
- xiii.** Sai Prakash Properties funds informed that funds are being collected through its own employees/ officers and has paid nominal commission of ₹ 25.74 lacs over a period of 2 financial years 2012-13 and 2013-14 for collecting funds/deposits from investors. It was

also informed that the company collected the funds/deposits in gross and paid commission separately. The year-wise details of commission paid from 2009 to 2014:-

Year	Number of persons to whom commission paid	Amount (₹)
2009-10	5468	32,78,192
2010-11	13,040	6,90,80,551
2011-12	155	34,53,073
2012-13	not separately provided	not separately provided
2013-14	48	25,74,530

- xiv.** A perusal of the balance sheets provided by the company shows the fund mobilization as under:-

	As on March 31, 2010	As on March 31, 2011	As on March 31, 2012	As on March 31, 2013	As on March 31, 2014 (provisional)
Advance received	6,14,01,220.48	54,58,79,287	75,39,02,483.67	79,65,79,107.67	84,76,80,152
Land (inventory)	0	33856343	3,38,56,343	3,38,56,343	3,38,56,343
Land (Fixed Assets)	0	20314000	5,00,92,935	5,77,65,935	5,77,65,935

- xv.** Sai Prakash Properties, in response to specific query by SEBI, in respect of any agreement with its group companies, informed that they have not entered into any operational agreement either with Sai Prakash Financial Advisory Services P. Ltd. or with Thind Finance Ltd. It is also noted that the company had not provided any specific comments (sought by SEBI, vide letter dated July 21, 2014), in respect of the circulars alleged to have been issued by Sai Prakash Financial Advisory Services P. Ltd (as provided by complainant).

- xvi.** It is also observed from the material furnished by Sai Prakash Properties that an FIR No.84 (7) of 2013 had been filed against Sai Prakash group on May 15, 2013 in Police Station Nuapada, Orissa. It was alleged in the FIR that officials of the company were offering high return through executives and agents for the schemes, including Sai Prakash Organic Foods Ltd. and Thind Finance Ltd.

- 13.** The aforementioned features of the so-called "*Joint Ventureship Scheme*" offered by Sai Prakash Properties 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.”*

13.1 In the context of the abovementioned Section 11AA of the SEBI Act, the “Scheme” offered by Sai Prakash Properties 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 "Certificate", it is clear that the company is collecting funds ("participation money") from general public towards its "Joint Ventureship Scheme" through various Payment Plans as detailed in Paragraph No.12.1 (iv) &(vi) above. The amount so collected from the public is treated as a participation made by him to the company in the participation plans of the company repayable to the "joint

venture customer"/investor as per the terms and conditions of the certificate, Rule book & agreement. It is observed from the balance sheet of the Company that funds received from investors are pooled together as "Investors Advance".

The "Agreement for Joint Venture Association" states "...Company is hereby authorized to enter into Agreement to secure the payment of money or receive money by way of Joint Venture or otherwise in such manner as the company may determine, and further authorized to invest or otherwise employ the money belonging or otherwise in such manner as the company may determine, and further authorized to invest or otherwise employ the money belonging or entrusted to company in movable or immovable properties or in securities or in such other manner as may be deemed expedient". It is further observed that the "joint venture customer"/investor is offered an "expected return of participation"/profit as per the "Certificate" issued by the company. There is no specific mention of the location of the plot in the various payment plans offered in the "Brochure", "Agreement for Joint Venture Association" and the "Certificate" of the Company. The plot of land is allocated to the investors by way of an "Allocation Letter" which states that a plot of land is allocated by way of the said letter, only as a collateral security to repay the amount agreed by the company, as per the investment plan. It is further stated that the company would help the "joint venture customer"/investor to dispose of the said land only in case the company goes in liquidation. This indicates amount mobilized from the public is pooled and utilized for the so-called "Joint Venturship Scheme" which offers an "expected return of participation"/profit at the end of the term period.

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.***

Clause 3 of the "Agreement for Joint Venture Association" states "that irrespective of the profit and loss suffered by the company, the company hereby undertake and assure to the party of the second part to pay the amount of investment plans as per the category and on maturity subject to the fulfillment of terms and conditions or as the case may be otherwise." Further from the various Payment Plans of the

"*Joint Ventureship Scheme*", offered by Sai Prakash Properties, it is observed that in case of the Single Installment Plan "*S4 for 60 months*", for the "*Participation Amount*" of ₹6000/-, the investor is offered an "*expected return of Participation*"/profit/return of ₹11,000/-, after 5 years/60 months. Thus, it is apparent that contributions by the "*joint venture customers*"/investors (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive "*expected return of participation*"/profit from such scheme or arrangement. 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.***

It is apparent from "*Brochure*", "*Agreement for Joint Venture Association*" and the "*Certificate*" that the contributions by "*joint venture customers*"/investors (whether by instalment or lump sum payment) are managed by Sai Prakash Properties on behalf of the investors during the agreed term of plan. Following clauses in the "*Application Form*", "*Agreement for Joint Venture Association*" and the "*Certificate*" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by Sai Prakash Properties, 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,

- "*.....Company is hereby authorized to enter into Agreement to secure the payment of money or receive money by way of Joint Venture or otherwise in such manner as the company may deter mine, and further authorized to invest or otherwise employ the money belonging or otherwise in such manner as the company may determine, and further authorized to invest or other wise employ the money belonging or entrusted to company in movable or immovable properties or in securities or in such other manner as may be deemed expedient*
- *The party of the second part have contributed with the Company the sum of Rs. the amount will be treated as a participation made by him to the company in the participation plans of the*

company repayable to the party of the second part as per the terms and conditions of the certificate, Rule book & agreement.

- *The Company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of second part [investors] will have no nexus rights of the shares or share capital of the company and its said business and party of the second party will have no nexus right of the shares or share capital of the company or to interfere the company or the management and the policies of the company or other wise the board of directors will have sole and absolutely discretionary powers as per the Companies laws.”*
- *All the tangible and intangible assets of the company including the goodwill, stock in trade, benefit of business license and permits, benefits of contracts entered etc. will be in the name of the company and the business license and permits, benefit of contracts entered etc. will be in the name of the company and the property of the company shall be used by the company exclusively for the business of the company and the Joint Venture shall have no nexus in right, title and interest in condition therewith.*
- *Further the company reserves the rights of area of allocation depending upon promotion cost / value of lands at the time of agreement. ”*

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

- 14.** The aforesaid fund mobilizing activity of the company, promising an "*expected return of participation*"/profit, has been camouflaged by Sai Prakash Properties, by way of a "*Joint Venture Association*" only to mislead and attract investment from the general public, which *prima facie* satisfies all the conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act. I, therefore find that Sai Prakash Properties 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.

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, 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. 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, since Sai Prakash Properties has launched '*collective investment scheme*' without obtaining certificate of registration from SEBI, it has contravened provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

16. It is further noted that Mr. Ranvajay Pratap Singh Baghel, Mr. Mragendra Singh Baghel and Mr. Dheerendra Krishan Pratap are the present directors of Sai Prakash Properties and Mr. Pushendra Singh Baghel, Mrs. Pushpanjali Singh Baghel Mr. Sandeep Shankar and Mr. Shahendra Singh Baghel are the past directors of the company. It is also relevant to note that the aforesaid past directors viz. Mr. Pushendra Singh Baghel and Mrs. Pushpanjali Singh Baghel hold the entire share holding of Sai Prakash Properties. The activity of unauthorized 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 Sai Prakash Properties in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that Sai Prakash Properties and its aforesaid directors/promoters are 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. 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 Sai Prakash Properties and its directors/promoters do not collect further funds under its schemes and to safeguard the assets/property acquired by Sai Prakash Properties 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.

18. 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 M/s Sai Prakash Properties Development Ltd. (PAN- AANCS7178R) and its promoters/directors, Mr. Pushpendra Singh Baghel (PAN-AFZPB0624B), Ms. Pushpanjali Singh Baghel (PAN: AFZPB0557M), Mr. Ranvajay Pratap Singh Baghel (PAN: ATTPB8254D), Mr. Mragendra Singh Baghel (PAN: BKJPB6325H), Mr. Dheerendra Krishan Pratap (PAN: AXMPB0165C), Mr. Sandeep Shankar (PAN: ANPPS8356M) and Mr. Shahendra Singh Baghel (PAN:ATTPB8244M):

- 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 Sai Prakash Properties out of the amounts collected from the "customers"/investors under its existing schemes;*
- f. to furnish all the information sought by SEBI, within 15 days of the receipt of this Order, including,*
 - i. scheme wise list of investors and their contact numbers and addresses, who have invested in the scheme till date,*
 - ii. the details of amount mobilized and refunded till date,*

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

- 20.** 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 M/s. Sai Prakash Properties Development Ltd. and its Directors/Promoters in accordance with law.
- 21.** M/s. Sai Prakash Properties Development 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. The company and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.
- 22.** A copy each of this Order be forwarded to Government of India, Ministry of Corporate Affairs; Government of India, Department of Agriculture & Co-operation; Reserve Bank of India, Bhopal and Reserve Bank of India, Chandigarh, for information.

Place: Mumbai
Date: December 26, 2014

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