

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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 SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of Karmbhoomi Real Estate Limited (CIN: U70102UP2010PLC040423) and its Directors viz., Mr. Devendra Pal Singh (DIN : 01832091), Mr. Sardar Singh (DIN : 02477583), Mr. Nirmal Kumar Singh (DIN: 03031024), Mr. Manoj Kumar Sengar (DIN: 03031042) and Mr. Mahipal Singh (DIN: 05308568).

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint vide email dated November 26, 2013 alleging that companies including Karmbhoomi Real Estate Limited (hereinafter referred to as "**Karmbhoomi**") launched various collective investment schemes without obtaining certificate of registration from SEBI or RBI. The complainant also enclosed a Registration letter (S.N 079359) issued by Karmbhoomi to an investor.
 2. As a matter of preliminary inquiry into whether or not Karmbhoomi is carrying on the activities of '*collective investment scheme*' in terms of Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI vide letter dated January 06, 2014 *inter alia*, sought the following information from Karmbhoomi and its Directors regarding its business activities viz.:
- i. *Memorandum and Articles of Association as filed with the Registrar of Companies('RoC'),*
 - ii. *Details of all the Promoters/Directors and key managerial personnel,*
 - iii. *Brochure, Pamphlets, Application forms, agreement letter/contract, registration letter and allotment letter pertaining to the schemes of Karmbhoomi.*
 - iv. *Copies of certificates issued to the investors to subscribe to the schemes:*
 - v. *Structure/terms and conditions of the schemes,*
 - vi. *Number of investors and amounts collected under various schemes,*
 - vii. *Copies of Annual Returns, audited Balance Sheet and Profit & Loss Accounts of Karmbhoomi since incorporation as filed with RoC,*
 - viii. *Copies of audited financial statements and Income Tax Returns filed by Karmbhoomi for the last three financial years.*

3. Meanwhile, vide another letter dated January 06, 2014, SEBI sought information from the RoC, Kanpur such as address of the company, names of present and past directors, period of directorship, copies of Memorandum and Articles of Association, Annual Returns, Form no. 32, Balance Sheets, Certificate of Incorporation, etc. However, no reply has been received from RoC.
4. As no reply was received from Karmbhoomi and its Directors in respect of SEBI's letter dated January 06, 2014, SEBI issued reminders dated February 21, 2014, April 22, 2014 and May 30, 2014 to furnish the information urgently. The letters issued to one of its Directors viz., Mr. Nirmal Kumar Singh was returned undelivered by the postal authorities with the remarks " *Incomplete Address, name of village of the addressee and his father's name not mentioned.*" It is noted that despite repeated efforts by SEBI to seek information by SEBI, Karmbhoomi and its Directors have failed to furnish any information till date.
5. I have carefully considered the material available on record i.e. information obtained from 'MCA 21 Portal' and the information forwarded by the complainant. In this context, the issue for determination is whether the mobilization of funds by Karmbhoomi through its "*Schemes*" offered to public falls under the ambit of '*collective investment scheme*' provided in Section 11AA of the SEBI Act.
6. On an examination of the same, it is *prima facie* observed:
 - I. Karmbhoomi (CIN: U70102UP2010PLC040423) was incorporated on April 30, 2010 having its registered office at First Floor, Tera Tower, Bhuteshwar Road, Mathura, Uttar Pradesh. The Directors of Karmbhoomi are Mr. Devendra Pal Singh, Mr. Sardar Singh, Mr. Nirmal Kumar Singh, Mr. Manoj Kumar Sengar and Mr. Mahipal Singh.
 - II. From the advertisement pamphlets, Rule book ('*Niyamavali*'), Career Guide ('*Career Margdarshika*') and 'Registration letter and receipt cum acceptance letter' provided by the Complainant, the following are noted:
 - (i) The Pamphlets issued by Karmbhoomi contain advertisements about its investment plans viz., Single Investment Plans ('SIP') and Recurring Investment Plans ('RIP'). For instance, an investor who invests a contributory amount of ₹1,00,000/- in SIP is offered an assured return of ₹ 4,04,000/- after 10 years. Similarly, in case of RIP, an investor is required to invest ₹ 1,000/- monthly to get an assured return of ₹1,40,000/- after 7 years. Furthermore, the

advertisements mention that on making such investments, the investor will get free ownership of land and accident policy cover.

- (ii) As per the 'Rule Book', Karmbhoomi offers two types of schemes on the basis of payment option to the investors viz., *Single Investment Scheme ("SIS")* for lump-sum investment and *'Multiple Investment Scheme ("MIS")* for investment in installments. There are eleven schemes in SIS i.e. Nos. 1-9 and 19-20 and eight schemes in MIS. Under the above mentioned two schemes, Karmbhoomi offer/invite investments in respect of sale of plots of variable sizes and the investor is entitled to an estimated realizable value for the plots as per the opted schemes. The details of *MIS and SIS* schemes provided in the brochure are illustrated as under:

Single Installment Scheme No. (1-9 and 19-20)													
Plot Size in sq.yds.	Purchase Consideration amount	Estimate Realizable Value											Accidental Risk Coverage
		1	2	3	4	5	6	7	8	9	19	20	
		1.6 years (18 mths)	3 years (36 mths)	4 years (48 mths)	5 years (60 mths)	6 years (72 mths)	7 Years (84 mths)	8 years (96 mths)	9 years (108 mths)	10 years (120 mths)	12 years (144 mths)	15 years (180 mths)	
5	1000	1200	1400	1550	2000	2100	2320	2560	2900	4040	4600	8100	2000
10	2000	2400	2800	3100	4000	4200	4640	5120	5800	8080	9200	16200	4000
15	3000	3600	4200	4650	6000	6300	6960	7680	8700	12120	13800	24300	6000
20	4000	4800	5600	6200	8000	8400	9280	10240	11600	16160	18400	32400	8000
25	5000	6000	7000	7750	10000	10500	11600	12800	14500	20200	23000	40500	10000
50	10000	12000	14000	15500	20000	21000	23200	25600	29000	40400	46000	81000	20000
75	15000	18000	21000	23250	30000	31500	34800	38400	43500	60600	69000	121500	30000
100	20000	24000	28000	31000	40000	42000	46400	51200	58000	80800	92000	162000	40000

Multiple Installment Scheme No. 12 (5 years)								In ₹
Plot Size Sq.Yds.	Purchase Consideration amount	MLY	QLY	HLY	YLY	Estimated Realizable Value	Profit	Accidental Risk Coverage
30	6000	100	290	575	1140	9020	3020	12000
60	12000	200	580	1150	2280	18040	6040	24000
90	18000	300	870	1725	3420	27060	9060	36000
120	24000	400	1160	2300	4560	36080	12080	48000
150	30000	500	1450	2875	5700	45100	15100	60000
180	36000	600	1740	3450	6840	54120	18120	72000
210	42000	700	2030	4025	7980	63140	21140	84000
240	48000	800	2320	4600	9120	72160	24160	96000
270	54000	900	2610	5175	10260	81180	27180	108000
300	60000	1000	2900	5750	11400	90200	30200	120000

- (iii) It is stated in the Rule Book that generally, plot allotment letter in favour of the purchaser/investor shall be issued within 365 days in case of SIS and within 60 days of the payment of the 50% installments in case of MIS.
 - (iv) The '*Career guide*' for agents of Karmbhoomi contains commission structure for its agents of SIS and MIS schemes. It is noted that the total commission offered to employees/agents of Karmbhoomi goes to as much as 49.75% in MIS schemes and 23.75% in SIS schemes. A separate Accidental Risk Coverage is also provided for the agents which forms part of the commission structure.
 - (v) The Registration letter and Receipt cum acceptance letter issued in favour of one Mr. Raji Hasan certifies "*the person described in the schedule hereto in response to the application cum agreement for the cultivated/ Agriculture based Plots booked as per details furnished hereunder*". It further certifies "*the terms of the allotment shall be governed by the terms of Agreement and General Terms and conditions printed overleaf*". However, the terms and conditions were not provided by the complainant.
 - (vi) It is noted from the '*Registration letter*' that the Complainant has invested ₹20,000/- as lump-sum amount in SIS-4 of the company on 12.11.2012. Tenure of agreement is mentioned as 5 years i.e. 12.11.2017 and the same is also mentioned as date of termination of agreement in the receipt cum acceptance letter. The documents also mention 100 Sq. Yards as size of plot. The Estimated realizable cost which is printed in the document is ₹40,000/- and it is the same as mentioned in the chart of the SIS scheme of Karmbhoomi. The letter also contains a note stating that Estimated Realizable Cost at the end of the term denotes composite offer for value of Land, Standing Crops, saplings, plants trees and allied items thereon.
- III. From the Balance Sheet and Profit and Loss accounts of Karmbhoomi for the financial year 2012-13, the following are noted:
- a. Karmbhoomi has taken advance from customers against allotment of plots to the tune of ₹13.61 crores and the same is shown as other current liabilities.

This has increased from the previous year, wherein the advance taken against allotment of plots was ₹11.26 crores.

- b. Karmbhoomi has allotted land to its customers/investors by way of sales and has earned sales revenue of ₹3 crores. It may be noted that the Auditor has written in the Notes on Accounts that Karmabhoomi has not allotted land in some cases but has added the same as sales.
- c. Karmbhoomi has land stock of ₹9.61crores. During financial year 2012-13, Karmbhoomi purchased land and incurred development expense to the tune of ₹6.89 crores.

7. The aforementioned features of the schemes offered by Karmbhoomi 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.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”

8. In the context of the abovementioned Section 11AA of the SEBI Act, the "*Schemes*" offered by Karmbhoomi, 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.***

Karmbhoomi is soliciting investments from the public through its scheme of sale of plots of land. The amounts are collected for the scheme by offering "*Single Investment Scheme (SIS)*" and "*Multiple Investment Scheme (MIS)*". An investor who is desirous of investing in the schemes of Karmbhoomi has to execute an '*application cum agreement*' for the cultivated/Agriculture based Plots booked as per details mentioned in the registration letter such as Scheme number, plot size, consideration, payment mode, term of the agreement and estimated realizable value. The terms of the allotment shall be governed by the terms of Agreement and General Terms and conditions printed overleaf. It is noted from the copy of '*Registration Letter*' issued to one of the investors that there is no identified/demarcated plot/land. It is noted from the '*Rule Book*' that Karmbhoomi is agreeing to arrange for the allotment and registration of plot in the name of the investor, within a reasonable period, not exceeding 365 days in case of Single Installment Scheme and in cases of Multiple Installment Scheme, the allotment would be done within a reasonable period, generally not exceeding 60 days after receipt of 50% of the consideration. The schemes of the company are for a minimum period of 3 years. As per the financial statements of Karmbhoomi, under the head of current liabilities an amount of ₹13.61 crores had been mentioned as advance taken from the customers against allotment of plots. This has increased from the previous year, wherein the advance taken against allotment of plots was ₹11.26 crores. Hence, in the absence of any information/documents to the contrary, it appears that the contributions are collected from the investors under the schemes launched by Karmbhoomi which is pooled and utilized solely for the purposes of the schemes offered by Karmbhoomi. In view of the aforesaid it is evident that the instant *Schemes/Plans* of Karmbhoomi satisfies the first condition stipulated in Section 11AA(2) 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.***

From advertisement pamphlets it is clear that investors are investing money in the schemes of Karmbhoomi in expectation of the returns promised in the advertisements of the company. In all the schemes, Karmbhoomi promises "*estimated realizable cost*" to the investors. For instance, if the applicant/investor is investing in Single Installment Scheme (SIS-4) for a period of 5 years for a plot size of 100 sq.yards, where the plot consideration is mentioned as ₹20,000/-, after the term period of 5 years, the investor is entitled to an '*estimated realizable cost*' of ₹40,000/- i.e. he/she is entitled to an amount of ₹20,000/- as returns. In light of above, it is *prima facie*, clear that the investments are made by the applicants/investors with a view to receive returns from the schemes. Hence, I find that the instant scheme of Karmbhoomi satisfies the second condition stipulated in section 11AA (2) of the SEBI Act.

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

It is noted from the 'Registration letter' that an investor is promised refund of "*Estimated Realizable Cost*" at the end of the term for his investment in the schemes of Karmbhoomi. The "*Estimated Realizable Cost denotes composite offer for value of Land, Standing Crops, saplings, plants trees and allied items thereon*". It is noted from the 'Registration letter' that the investor is not provided with details in respect of the plot/land purchased and supposed to be allotted by Karmbhoomi in future. This indicates that there is no certainty as regards the plot of land which an investor is going to get on making the payments as contracted. In light of these facts and circumstances, it is clear that the property, contribution or investment forming part of the scheme/Plans are managed by Karmbhoomi on behalf of applicants/investors and they do not have any day-to-day control over the management of the schemes/Plans. It is pertinent to mention here that SEBI has repeatedly sought specific details of its scheme from Karmbhoomi but they have chosen not to give any details despite being given several opportunities. In

view of above, I find that the instant scheme/Plans satisfies third and fourth conditions stipulated in Section 11AA (2) of the SEBI Act.

9. From the above analysis, I find that the "*schemes*" offered by Karambhoomi with a promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie*, satisfy all the four conditions specified in Section 11AA (2) of the SEBI Act. I, therefore, am of the view that Karambhoomi is engaged in fund mobilizing activity from public, which is in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.
10. In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of PGF Limited Vs. Union of India (MANU/SC/0247/2013) that "*...sub-section (2) of Section 11AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result therefrom.*"
11. I note that in terms of Section 12(1B) of the SEBI Act, "*no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations*". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "CIS Regulations") also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, the launching/floating/sponsoring/causing to sponsor any '*collective investment scheme*' by any '*person*' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In this regard, I note that Karambhoomi has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public under its schemes of *land/plot*.
12. It is noted that Karambhoomi was advised to respond to the preliminary inquiry conducted by SEBI vide letter dated January 06, 2014 and reminders dated February 21, 2014, April 22, 2014 and May 30, 2014. However, Karambhoomi failed to furnish the details of scheme as

sought by SEBI. This appears to be a deliberate attempt to avoid furnishing the details to SEBI. In these circumstances, I find that sufficient opportunities have been afforded to Karmbhoomi to respond to SEBI. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information with respect to its schemes to SEBI is nothing but an attempt to conceal the true nature and operation of the fund mobilizing activity of Karmbhoomi.

13. 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 safeguard the assets/property acquired by Karmbhoomi and its Directors from using the funds collected from the investing public until full facts and materials are brought and final decision is taken in the matter, I find no other alternative but to take recourse to an interim order against Karmbhoomi and its Directors for preventing them from further carrying on with its existing fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.

14. In view of above, I, in exercise of powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act read with CIS Regulations and PFUTP Regulations, hereby direct Karmbhoomi Real Estate Limited (CIN: U70102UP2010PLC040423) and its Directors viz., Mr. Devendra Pal Singh (DIN : 01832091), Mr. Sardar Singh (DIN : 02477583), Mr. Nirmal Kumar Singh (DIN: 03031024), Mr. Manoj Kumar Sengar (DIN: 03031042), Mr. Mahipal Singh (DIN: 05308568):

- *not to collect any fresh money from investors under its existing schemes;*
- *not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- *to immediately submit the full inventory of the assets including land obtained through money raised by Karmbhoomi;*
- *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by Karmbhoomi;*
- *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of Karmbhoomi.*
- *to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*
 - i. *Details of amount mobilized and refunded till date,*

- ii. Details of commission paid on amounts mobilised above,*
- iii. Details of agents along with their addresses, etc.,*
- iv. Scheme wise list of investors and their contact numbers and addresses,*
- v. PAN of the aforementioned Directors and*
- vi. Audited Accounts for the last three years.*

15. The above directions shall take effect immediately and shall be in force until further orders.
16. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Karmbhoomi and its abovementioned past and present Directors in accordance with law.
17. The *prima facie* observations contained in this Order are based on the material available on record. In this context, Karmbhoomi and its Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai
Date: December 30, 2014

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