

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 SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of Garima Homes and Farm Houses Limited (CIN: U70109PB2011PLC035012) and its Directors viz., Mr. Shivram Kushwah (DIN: 02338542), Mr. Banabarilal Lodhi (DIN: 01759136), Mr. Balkishan Kushwah (DIN: 02338533), Mr. Banwari Lal Kushwah (DIN: 01829943) and Mr. Bijendra Pal Singh (DIN: 01781312) and Mr. Jitendra Kumar (DIN: 06719377).

-
1. Securities and Exchange Board of India ("SEBI") received information from a complainant who visited SEBI's Indore Local Office and alleged improper fund mobilization activities carried out by Garima Homes and Farm Houses Limited (hereinafter referred to as "**company/GHFL**"). The complainant also submitted a copy of 'Registration letter' and an *Advance Receipt cum Acceptance letter* issued to a customer.
 2. As a matter of preliminary inquiry into whether or not GHFL 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 May 5, 2014 *inter alia*, sought the following information from GHFL regarding its business activities viz:
 - i. *Memorandum and Articles of Association of GHFL as filed with the Registrar of Companies('RoC'),*
 - ii. *Details of all the Promoters/Directors and key managerial personnel,*
 - iii. *Sample Copies of Brochure, Pamphlets, Application forms, agreement letter/contract, registration letter and allotment letter pertaining to the schemes of GHFL,*
 - 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 GHFL since incorporation as filed with RoC,*
- viii. *Copies of audited financial statements and Income Tax Returns filed by GHFL for the last three financial years.*

3. The said letter was however returned undelivered by the postal authorities. Subsequently, SEBI issued an email to GHFL on June 30, 2014 and also conducted a site visit at its registered office in Mohali. GHFL could not be located at its registered office. No other information regarding GHFL could be gathered from the site visit. Similarly, a site visit was conducted in GHFL's head office in Patparganj Industrial Area, Delhi and the office was observed to be functioning at the said address. SEBI issued reminder dated July 07, 2014 to GHFL (Delhi) and to its Directors. Despite follow up with GHFL by SEBI, no information has been received from GHFL or its Directors till date.
4. I have carefully considered the material available on record such as information and documents furnished by the complainant and the information gathered from *MCA21 Portal*, etc. In this context, the issue for determination is whether the mobilization of funds by GHFL under its schemes fall under the ambit of "*Collective Investment Scheme*" provided in Section 11AA of the SEBI Act.
5. On an examination of the material available on record, it is *prima facie* observed as under:
 - a) GHFL(CIN: U70109PB2011PLC035012) was incorporated on April 29, 2011 having its registered office at Pandwala Road, Mubarkpur, Tehsil Dera Bassi, Mohali, Punjab. Its present Directors are Mr. Shivram Kushwah (DIN: 02338542), Mr. Banabarilal Lodhi (DIN: 01759136), Mr. Balkishan Kushwah (DIN: 02338533), Mr. Banwari Lal Kushwah (DIN: 01829943), Mr. Bijendra Pal Singh (DIN: 01781312) and Mr. Jitendra Kumar (DIN: 06719377).
 - b) As per the MoA of GHFL, its main objects are: “ *to carry on the business of purchase, sale, take on lease and acquire land to develop, construct and build houses for residential and commercial use, flats, residential colonies, malls, hotels, industrial plots, residential plots, farm houses and to acquire, allot, assign, lease, sell, improve, manage,*

develop and deal with property of all kinds including land and building in India and abroad."

- c) As per the brochures, schemes offered by GHFL were lump sum payment scheme *viz.*, "*Ek Musht Yojana (CDPP), Scheme No. G-2*" and instalment payment scheme *viz.*, "*Kisht Bhugtan Yojna (RIPP), Scheme No. A-1 for 5 years*". As per these schemes, GHFL offered investment in plot of land of sizes from 800 sq. ft. onwards. GHFL offers an exit option to the applicants after the expiry of terms of the respective plans with a refund of '*estimated realizable value*' as per the opted plans. If the applicant/investor opts to continue with the plan at the end of 15 years (term) he/she needs to make payment of specified amount for effecting registration of plot. The details in respect of Scheme G-2 and Scheme A-1 are illustrated as under:-

Scheme G-2

Plot unit no.	Area in Sq.ft	Total deposit amount	Payment after 6 yrs	Payment after 9 yrs	Payment after 11 yrs	Accident Compensation
1	1200	15000	30000	45000	60000	22500
2	2400	30000	60000	90000	120000	45000
3	3600	45000	90000	135000	180000	67500
4	4800	60000	120000	180000	240000	90000
5	6000	75000	150000	225000	300000	112500
6	7200	90000	180000	270000	360000	120000
7	8400	105000	210000	315000	420000	120000
8	9600	120000	240000	360000	480000	120000
9	10800	135000	270000	405000	540000	120000
10	12000	150000	300000	450000	600000	120000
11	13200	165000	330000	495000	660000	120000
12	14400	180000	360000	540000	720000	120000
13	15600	195000	390000	585000	780000	120000
14	16800	210000	420000	630000	840000	120000
15	18000	225000	450000	675000	900000	120000
16	19200	240000	480000	720000	960000	120000
17	20400	255000	510000	765000	1020000	120000
18	21600	270000	540000	810000	1080000	120000
19	22800	285000	570000	855000	1140000	120000
20	24000	300000	600000	900000	1200000	120000

Scheme No. A-1		Installment Payment scheme (RIPP)					Time limit 5 years	
Plot Unit No	Area in sq. ft	Total Deposit Amount	Mtly	Qtly	Half Yrly	Yrly	Payment on Maturity After 5 yrs	Accidental Compensation
1	800	6600	120	345	680	1320	9500	9900
2	1200	13200	240	690	1360	2640	19000	19800
3	1600	19800	360	1035	2040	3960	28500	29700
4	2000	26400	480	1380	2720	5280	38000	39600
5	2400	33000	600	1725	3400	6600	47500	49500
6	2800	39600	720	2070	4080	7920	57000	59400
7	3200	46200	840	2415	4760	9240	66500	69300
8	3600	52800	960	2760	5440	10560	76000	79200
9	4000	59400	1080	3105	6120	11880	85500	89100
10	4400	66000	1200	3450	6800	13200	95000	99000
11	4800	72600	1320	3795	7480	14520	104500	108900
12	5200	79200	1440	4140	8160	15840	114000	118800
13	5600	85800	1560	4485	8840	17160	123500	120000
14	6000	92400	1680	4830	9520	18480	133000	120000
15	6400	99000	1800	5175	10200	19800	142500	120000
16	6800	105600	1920	5520	10880	21120	152000	120000
17	7200	112200	2040	5865	11560	22440	161500	120000
18	7600	118800	2160	6210	12240	23760	171000	120000
19	8000	125400	2280	6555	12920	25080	180500	120000
20	8400	132000	2400	6900	13600	26400	190000	120000

d) As per scheme G-2 tabulated above, if an investor who desires to invest in a plot of land of 1200 sq. feet, the consideration collected is ₹15,000/- and the returns offered by GHFL after a period of 6 years is ₹30,000/-, 9 years is ₹45,000/- and 11 years is ₹60,000/-. If an investor opts to continue with the scheme and purchase the plot, after 15 years(term), investor needs to make an additional final payment of ₹14,85,000/- (i.e. 1237.50 x1200+ registration charges) for the registration of the plot. Similarly, in Scheme A-1 for a 800 sq. ft. plot, consideration received is ₹6,600/- and the estimated value of the plot after five years is given as ₹9,500/-. If an investor opts to continue with the plan and purchase the plot, after fifteen years (term), investor needs to make an additional final payment of ₹9,93,600/- (₹1,242/- per sq. ft. along with registration charges) for effecting the registration of plot.

e) The applicants/investors who are interested in the aforesaid scheme of GHFL are made to execute an "*Application form along with an Agreement*" with GHFL. Upon execution of the same, GHFL issues a '*Registration letter*' and '*Advance Receipt cum Acceptance letter*'. As per the terms and conditions attached to a sample application form the following are noted:

- i. "*Garima arranges for sale of property in favour of the customer and to develop and maintain the same by rendering various services.*
- ii. *Garima agrees to sell the plot to customer and to develop and maintain the plot.*
- iii. *The customer shall be entitled for allotment of the property and subsequent transfer of title and possession in his favour by registered sale deed within such period after receipt of full consideration in case of cash down payment plan...*
- iv. *Garima undertakes to carry out the necessary works by conducting survey, demarcation clearing and other related jobs/works on behalf of the customer.*
- v. *Garima shall procure and install bore wells, open wells and other water points and install motors, pump sets and other facilities main pipelines, electrical required for the development of the property.*
- vi. *Garima has the rights to develop and maintain the said property in consultation with experts and customer shall not ordinarily interfere with the mode of development and maintenance of the said property..."*

f) On perusal of the '*Registration letter*' dated December 26, 2012 issued by GHFL to one Mr. Bhuvneshwar Prasad Shrivastava, it is observed that there is another scheme offered by GHFL viz., *Plan G3-5*. The plot size is mentioned as 800 sq.ft. and payment plan comprises of 20 quarterly instalments and term period of the plan is 5 years. Further, the expected cost of the plot if the customer opts to exit is given as ₹17,100/-. The aspect of registration of plot or handing over possession of plot to customer is nowhere mentioned in the '*Registration letter*'.

g) On perusal of balance sheet and other financial statements of GHFL as downloaded from *MCA21 portal*, it was observed that approximately ₹13.56 crores were shown under the head '*current liabilities*' as on March 31, 2013. Approximately, ₹9.02 crores were shown as '*short term loans and advances*' and fixed assets are only ₹16.88 lakh.

6. The details of the 'Schemes' offered by GHFL have to be considered in light of Section 11AA of the SEBI Act. 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.

7. In the context of abovementioned Section 11AA of the SEBI Act, the schemes offered by GHFL 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 per the schemes offered in the 'brochure and Application form, Agreement and the Registration letter', it is noted that GHFL is collecting money from the general public under its schemes of development and maintenance of plot of land. It is noted from the copy of registration certificate issued to one of the investors that there is no clearly identified and demarcated plot/land. The location of the plot is also not mentioned. The 'Registration letter' issued to the applicant/investor and the 'Terms and Conditions' forming part of the said certificate does not indicate the ownership aspect of the plot/land under the schemes offered

by GHFL. Furthermore, an *expected cost of the plot*' which the customer/investor is entitled to at the end of the term is mentioned in the '*Registration letter*'. The aspect of registration of plot or handing over possession of plot to customer is nowhere mentioned in the '*Registration letter*'. It is noted that even after receipt of full consideration in Scheme G2 (lump-sum payment plan), GHFL is not transferring the plot of land in favour of the investor. In any case, an investor needs to make an additional payment for the registration of the plot after the completion of term period i.e. 15 years. Hence, these schemes do not appear to be plain real estate transactions. It is noted from the financial statements of GHFL as downloaded from *MCA21 portal* that approximately an amount of ₹13.56 crores was shown as 'current liabilities' as on March 31, 2013. 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 GHFL which is pooled and utilized solely for the purposes of the schemes offered by GHFL. In view of the aforesaid it is evident that the instant '*schemes*' satisfy 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.

From the '*Registration letter*' issued by GHFL to investor, it is noted that GHFL promises an estimated cost of land after the expiry of term. For instance, In plan G-3 (for 5 years) for a plot of 800 sq.ft., if an investor invests ₹12,000/-, GHFL is promising estimated cost of plot as ₹17,100/- at the end of the term i.e. he/she is entitled to ₹5,100/- as returns. Further, as per Schemes offered by GHFL illustrated above, it is noted that if an investor who desires to invest in a plot of land of 1200 sq. ft. (in *Scheme G-2*), the consideration collected is ₹15,000/- and the returns offered by GHFL after a period of 6 years is ₹30,000/-, 9 years is ₹45,000/- and 11 years is ₹60,000/-. Similarly, in *Scheme A-1* for a 800 sq feet plot, consideration received is ₹6,600/- and the estimated value of the plot after five years is given as ₹9,500/-. In light of above, it is *prima facie*, appear that the investments are made by the

applicants/investors with a view to receive returns from the schemes. I, therefore, find that the instant *scheme* also satisfies the second condition stipulated in Section 11AA(2) of the SEBI Act.

iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.

iv. The investors do not have day to day control over the management and operation of the scheme or arrangement.

It is apparent from '*brochure, application form, agreement and registration letter*' that contributions made by the customers/investors in either instalment or lump sum payment schemes are collected by GHFL who in turn manage these funds on behalf of investors during agreed term of Plan. 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 GHFL in future. It is noted from Clause 2(b) of terms and conditions attached to sample application form that "*Garima has the rights to develop and maintain the said property in consultation with experts and customer shall not ordinarily interfere with the mode of development and maintenance of the said property...*" In light of these facts and circumstances, it is clear that the property, contribution or investment forming part of the schemes are managed by GHFL on behalf of customers/investors and they do not have any day-to-day control over the management of the schemes. In view of above, I find that the instant schemes satisfy third and forth conditions stipulated in Section 11AA (2) of the SEBI Act.

8. The activity of fund mobilization by GHFL under the *scheme/plans* for allotment, development and maintenance and subsequent transfer of land, with a promise of return/"*estimated realizable value at the end of the term*", when considered in light of peculiar characteristics and features of such *schemes*, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. I find that GHFL is carrying on collective investment scheme under the garb of sale/development of plot (s) of land.

9. I note that in terms of Section 12(1B) of the SEBI Act, "*no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a*

certificate of registration from the Board in accordance with the regulations". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**") also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any '*collective investment scheme*' by any '*person*' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that GHFL 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*.

10. It is noted that Mr. Shivram Kushwah (DIN: 02338542), Mr. Banabarilal Lodhi (DIN: 01759136), Mr. Balkishan Kushwah (02338533), Mr. Banwarilal Kushwah (DIN: 01829943) Mr. Bijendra Pal Singh (DIN: 01781312) and Mr. Jitendra Kumar (DIN: 06719377) are the Directors of GHFL. Furthermore, SEBI vide Order dated November 24, 2014 directed Garima Real Estates and & Allied Limited (group company of GHFL) and the aforesaid Directors "*not to collect any more money from investors including under the existing schemes; not to launch any new schemes; not to dispose of any of the properties or alienate any of the assets of the schemes; not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.*"
11. I also find that the activity of illegal mobilization of funds by GHFL through its schemes, *prima facie*, 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 ("PFUTP Regulations").
12. It is noted that GHFL was advised to respond to the preliminary inquiry conducted by SEBI vide letter dated May 05, 2014 and reminders dated June 30, 2014 and July 07, 2014. However, GHFL failed to furnish the details of schemes as sought by SEBI. This appears to be a deliberate attempt to avoid furnishing the details to SEBI. Under these circumstances, I find that sufficient opportunities have been afforded to GHFL 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 GHFL. The features of schemes offered by GHFL indicate that it is running a '*scheme*' under the garb of real estate business. There are no identified saleable units, hence, it appears *prima facie* that the schemes, G3-5, G2 and A1 run by GHFL are *collective investment schemes* as defined in Section 11AA(2) of SEBI Act, 1992 and GHFL is running the same without obtaining the registration with SEBI in violation of Section 121B of the SEBI Act, 1992 and provisions of CIS Regulations, 1999.

13. Protecting the interests of the investors is the first and foremost mandate of SEBI and therefore, SEBI has to take immediate steps to prevent activities if companies or persons defrauding the investors and damaging the orderly development of the securities market. In order to ensure that GHFL and its Directors (past and present) do not collect further funds under its scheme/Plans and to safeguard the assets/property acquired by GHFL and its 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. In the light of the above, I find no other alternative but to take recourse to an interim order against GHFL and its past and present Directors for preventing them from further carrying on with the fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.
14. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act *read with* CIS Regulations and PFUTP Regulations, hereby direct Garima Homes and Farm Houses Limited (CIN: U70109PB2011PLC035012) and its Directors viz., Mr. Shivram Kushwah (DIN: 02338542), Mr. Banabarilal Lodhi (DIN: 01759136), Mr. Balkishan Kushwah (02338533), Mr. Banwarilal Kushwah (DIN: 01829943) Mr. Bijendra Pal Singh (DIN: 01781312) and Mr. Jitendra Kumar (DIN: 06719377):
 - (i) *not to collect any fresh money from investors under its existing schemes;*
 - (ii) *not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
 - (iii) *to immediately submit the full inventory of the assets including land obtained through money raised by GHFL;*
 - (iv) *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by GHFL;*

- (v) *not to divert any fund raised from public at large which are kept in bank account(s) and/or in the custody of GHFL;*
- (vi) *to furnish all the information/documents sought by SEBI vide letter dated May 05, 2014, within 15 days from the date of receipt of this order, including:*
- i. Scheme wise list of investors and their contact numbers and addresses;*
 - ii. PAN of the aforementioned Directors and*
 - iii. Details of agents along with address, money mobilized and commission paid.*

15. The above directions shall take effect immediately and shall be in force until further orders in this regard.
16. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Garima Homes and Farm Houses Limited and its 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, Garima Homes and Farm Houses Limited and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai

Date: February 03, 2015

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