

**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 Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in respect of M/s Future Gold Infrabuild India Limited (PAN: AABCF3920E) and its Promoters/Directors viz. Mr. Dhirendra Singh Kushwaha (PAN: BGGPK7521R), Mr. Satyendra Singh (PAN: CDDPS5928P), Mr Vineet Kumar Phalke (PAN: APDPP0190C), Mr. Afasar Khan (PAN: CLHPK5064N) and Mr Dinesh Singh Bhadoriya (PAN: AJJPB1169R)

1. SEBI received a complaint dated January 13, 2014, filed on behalf of eight investors of M/s Future Gold Infrabuild India Ltd. (hereinafter referred to as **"Future Gold"/the company**). Details of the complaint were as under:

- The complainants deposited their money at the Bhopal office of the company on the basis of the assurance given by the company that they would be given 10% yearly interest,
- They were told that company is registered with SEBI & RBI,
- On completion of the term period, when the investors/complainants deposited their original policies/certificates at the Bhopal office of the company on October 03, 2013, the company refused to refund the amount due to the them.

The complainants also furnished a copy of sample agency form for appointment of agents of the company, brochure of the company and sample registration kit consisting of sample application form and agreement of the company, copies of certificates issued by the company to the complainants, etc..

2. As a matter of preliminary examination into the alleged fund mobilization by Future Gold, 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 February 14, 2014, *inter alia* sought the following information from Future Gold, in relation to their business activities.

- Memorandum and articles of Associations (MoA and AoA) of the Company as filed with the Registrar of Companies.
- Details of the past and present directors of the company. Details should contain name, address, PAN and contact details (Email/fax/contact no.) of the directors.
- Brochures pertaining to the company's schemes/ offers which were made available to the public.
- Copies of applications forms that are required to be submitted by investors/applicants to participate in the company's schemes.
- Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the company's schemes.
- Sample copies of the agreement letter/ contract required to be entered into by investor/applicant under the company's schemes.
- Details of the scheme wise amount mobilized by the company till date along with the number of investors under the schemes.
- Name & address of all the investors who put their money with the company.
- List of all the branches of the company.
- Certified copy of audited financial statement for the FY 2010-11, 2011-12 & 2012-13. Further, detailed trial balance from April 2013 onwards was also sought.
- Copy of Income Tax Return filed by the company for financial year 2010-11 onwards was sought.
- Details of any other similar scheme(s), if any, floated by the company or its group/associates company including M/s Futureshine Corporation India Ltd.

2.1 The copies of all the documents furnished by the complainants to SEBI (mentioned in Paragraph No. 1, above) had also been forwarded to the company and its directors. The letters sent to the company at its registered office and corporate office addresses and letters sent to two of the directors *viz.* Mr. Satyendra Singh and Mr. Dinesh Singh Bhadoriya were returned undelivered by postal authorities. The remaining directors, *viz.* Mr. Dharendra Singh Kushwah and Mr Vineet Kumar Phalke did not respond to the letter sent by SEBI, even though the letters were delivered to them.

3. As per the details available on MCA website, it was observed that the aforesaid directors *viz.* Mr. Dharendra Singh Kushwah, Mr. Satyendra Singh and Mr. Dinesh Singh Bhadoriya are

also directors of another company viz. M/s Futureshine Corporation India Ltd. On examining the website of M/s Futureshine Corporation India Ltd. (group company of Future Gold), viz. <http://futureshine.co/>, the following were noticed:

- The address of the company is mentioned as B-68, Sector 63, Noida (Uttar Pradesh)
 - It is mentioned in the website that *“Future Gold Infrabuild India Ltd. is always ahead in creating opportunities to educated unemployed persons to earn large income (commission) through its various attractive plans & schemes when compared with other companies / organizations in the entire country. Continuing with your current profession, you can also enroll with future gold on a full time or part time basis and earn additional income. Future Gold career does not charge any fees for any of their training programmes, but one has to obtain a license for which the license fee is payable as per the ranks applied for, and the license has to be renewed every year.”*
4. Meanwhile, in view of non-receipt of any information from the company, reminders vide letters dated July 16, 2014 and July 31, 2014 were sent by registered post to the company & its directors, advising them that failure on the part of the company to submit the required documents/information regarding the fund mobilizing activity of the company would tantamount to violation of the provisions of SEBI Act, 1992 and that SEBI is empowered to initiate appropriate enforcement action against the company.
5. In view of the refusal of the company to co-operate with SEBI in providing information, a SEBI officer personally visited the corporate office of the company at B-68, 2nd floor, Sector 63, Noida (UP) on August 01, 2014. It was found that company was operating from the said premises. SEBI's letters dated February 14, 2014 and July 16, 2014 were personally delivered and acknowledgement was taken from the company. An officer from SEBI also visited the Raipur Office of the company and personally delivered the letters of SEBI. SEBI officer also obtained a copy of brochure, sample agreement, sample registration certificate, a list of 367 investors attached to the Raipur branch of Future Gold etc. from their office.
- 5.1 On August 08, 2014, a letter was received from the company seeking additional 15 days time to reply on query of SEBI. In response, SEBI, vide letter dated August 12, 2014, advised the company to submit the reply latest by August 18, 2014.

6. In the meanwhile, SEBI obtained the auditor's report of the company for 2012-13 from the MCA website, wherein the name of Kaushal Pandey & Co., Chartered Accountants was mentioned as the auditor of the company. It was however, noticed from the downloaded financial statement that the same was neither been signed by any director nor by the auditor. Further, there was no mention of mobilization from public in the balance sheet for 2012-13.

6.1 In view of this, clarifications were sought from the aforesaid auditor vide e-mail dated July 30, 2014. In response, the auditor informed that they had prepared the Report on the basis of the documents submitted by the company.

7. Subsequently, a letter dated August 27, 2014 was received from the company, wherein the following documents/information were provided:

- MoA and AoA of the company,
- Details of past & present directors of the company,
- Audited financial statement for FY 2010-11, 2011-12 & 2012-13 along with copy of Income Tax returns.

7.1 Vide the aforesaid letter, the company also *inter alia* made the following submissions:

- *The company is engaged in the business of purchase and sale of agriculture land and its development for a period from 4 to 4.5 years depending on choice of the customer at the time of entering into agreement.*
- *They acquires agricultural land from villagers in their name or by taking possession of the agricultural land on paying the full amount of consideration to the sellers and also getting an irrevocable power of attorney in favour of the representatives of the company.*
- *The substantial part of these land were transferred to the customers as per their agreement.*
- *They receive applications from its customers for purchase & development of agricultural land.*
- *Under the agreement customer can make cash down or in installments.*
- *The company has to transfer the land by executing the sale deeds in favour of the customers.*

- *The company does not promise any assured return. The said agreement is for the sale of the agricultural land in favour of the customers and development of the same during the tenure of agreement.*
- *The scheme of the company does not fall under the definition of Collective Investment Scheme.*
- *The customer agrees buy a specified/identifiable land from the company for consideration.*
- *The purchase and sale of agricultural land and its development comes under Entry 18 of list II of Seventh Schedule of the Constitution of India.*

7.2 The company, however did not provide other important documents/information such as details of the scheme wise amount mobilized by the company along with the number of investors under the schemes, name & addresses of all the investors who put their money with the company etc. which were sought vide SEBI's letters dated February 14, 2014. It was also observed that the company did not provide its comments in respect of the documents including the certificates stated to have been issued by the company to the complainants.

8. In view of the above, it is clear that the company & its directors are not cooperating with SEBI. They are not providing complete documents/information sought by SEBI in various letters issued to them. In view of the same, I am proceeding on the basis of documents available with us. I have carefully perused the aforesaid documents and material available on record such as, complaint received by SEBI along with the documents contained therein, correspondence exchanged between SEBI and Future Gold along with the documents contained therein; the submissions made by Future Gold; other information/material received by SEBI, such as "Brochure", copy of "Agreement", "Registration Certificate", etc. of the company. The issue for determination in the instant matter is whether the mobilization of funds by Future Gold is a 'collective investment scheme' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

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

- i. M/s Future Gold Infrabuild India Ltd. (CIN No. U70101MP2009PLC022305) was incorporated on August 21, 2009. The Registered Office of the company is at : 501, Top Floor, Lucky Plaza, Malviya Nagar, Bhopal, Madhya Pradesh-462003.
- ii. Present and past directors of the company are:-
 1. Mr. Dharendra Singh Kushwah, (*February 27, 2012 onwards*) residing at Vill :- P.O Bajhai, PS- Umari, Bhind, Madhya Pradesh :-477001
 2. Mr. Satyendra Singh ,(February 27, 2012 onwards) residing at 80/3 Gram Ridouli, Tehsil :- Ater, Bhind, Madhya Pradesh :-477111
 3. Mr Vineet Kumar Phalke,(January 23, 2012 onwards) residing at Shabd Partap Ashram, Dist :- Gwalior, Madhya Pradesh :- 474012.
 4. Mr. Afasar Khan, (*from January 17, 2014 onwards*) residing at 18, Bag Farhat Afja, Hujur, Bhopal, Madhya Pradesh- 462010
 5. Mr Dinesh Singh Bhadoriya (*ceased to be a director on February 27, 2012*), residing at E-93, Balwant Nagar, Thatipur, Gwalior, Madhya Pradesh :- 474011
- iii. It is also observed that the directors mentioned at serial Nos. 1, 2 and 5 are also directors of another company viz: M/s Futureshine Corporation India Ltd. having its registered office at B-11, Mezzanine Floor, Progressive Point, Near Fruit Market, Raipur, Chhattisgarh.
- iv. As per the MoA of the company, the main object are "*to purchase, lease, exchange, acquire, construct, sell, develop or reconstruct land/property, colonies, houses, bungalows, multi storied flats, malls....*"
- v. It is noted from the brochure that company is inviting applications for allotment and subsequent transfer of property/ land unit(s) and development and maintenance of the same under its various plans. The plans are broadly divided into,

- **“Lump sum Payment Plan”** [L-1 to L-7 for period ranging between 1year to 12 year],
- **“Installment Payment Plan”** [Plan A (for 1 year), Plan A1(for 2 years), Plan B (for 4 years), Plan D (for 5 years), Plan E (for 5.6 years), Plan F (for 6 years)] and
- **“Monthly Installment Plan”** [MIS-I giving monthly and yearly return].

A sample table installment payment plan from the brochure is reproduced below:-

Installment Plan F (for 6 years)

Units	MLY	QLY	HLY	YLY	Cost of total Unit	Cost of Final Unit	Accidental Risk Cover
1.2	77	225	440	875	6000	10250	9000
2.4	154	450	880	1750	12000	20500	18000
3.6	231	675	1320	2625	18000	30750	27000
4.8	308	900	1760	3500	24000	41000	36000
6	385	1125	2200	4375	30000	51250	45000
7.2	462	1350	2640	5250	36000	61500	54000
8.4	539	1575	3080	6125	42000	71750	63000
9.6	616	1800	3520	7000	48000	82000	72000
10.8	693	2025	3960	7875	54000	92250	81000
12	770	2250	4400	8750	60000	102500	90000

- vi. The “*applicants*’/investors who are interested in the aforesaid scheme of development and maintenance of land offered by Future Gold are made to file an “*Application cum Agreement*” (in the form of a booklet) with Future Gold. The application form contains basic details of the applicant (like name, address etc.), plan details (giving plan number, number of land units, terms of plan, total consideration, lumpsum payment, regular installment plan, mode of payment), etc. Following are noted in the sample “*Application cum Agreement*” (Booklet):

“General Terms and Conditions” in the Application Form

- “The land shall be allotted in the name of the applicant in case of lump sum payment after 90 days of receipt of full payment but in case of installment payment plans land shall be allotted after 60 days of receiving of 50% consideration amount.
- ..Since fragmentation into smallest size of land may not be practicable, feasible, permissible under relevant revenue and local laws, the applicant shall have requisite share along with other allottees/transferee in a particular piece of land. Future Gold shall execute/procure execution and registration of sale deed ensuring the title and interest of allottees/transferee's in the joint holding with other applicant. Accordingly symbolic possession of the plot shall be handed over to the

customers.the title deeds pertaining to the sale of the said property shall be kept in the safe custody of trustee appointed by Future Gold.....

- *In case the customer is not possible to sell the allotted land due to some local/revenue law. Future Gold reserves right to allot another piece of land in place of previous allotment in this case customer has the option to receive the amount as per the plan opted by him..*
- *..to facilitate easy liquidity, Future Gold provides to applicant the marketing services for sale of developed land."*

Agreement

- *And whereas Future Gold has agreed to arrange for the sale of the said property in favour of the customer, and to develop and maintain the same by rendering service....*
- *The customer shall be entitled for allotment of said property, and subsequent transfer of title possession of the same in his favour by means of a sale deed within such period, after receipt of full consideration in Cash Down Payment plan..*
- *Future Gold has the right to develop maintain the said propertycustomer shall not ordinarily interfere with the method and mode of development and maintenance of the said property.....*

vii. After executing the said agreement, Future Gold issues a "Certificate" to the "applicant"/investor acknowledging the receipt of the payment (lumpsum or installment) as per the plan opted by the "applicants"/investors. The said "Certificate" contains the following information,

- Details of the applicant name/address and other details,
- Registration No. & date of commencement and Plan No. & term,
- Consideration/Cost of the product,
- Periodicity and Mode of payment,
- Details of "Expected cost of product" at the end of term,
- Date of last instalment,
- Date of expiry of term,
- Amount of instalment.

viii. Apart from the above, the certificate (furnished by the complainant) also states ".....the company shall pay in Indian Currency at its customer service centre through Head Office, the amount due

under this certificate in accordance with the terms of schedule to the person to whom the same is herein expressed at be payable....."

- ix. The details of mobilization as seen from the copies of certificates provided by the complainants have been given below:-

Name of Investor	Date of commencement of Plan	Plan No.	Consideration	Date of Expiry of Plan	Expected sum payable
Mrs. Durga Bai	29/9/2012	L-1	3,00,000	29/09/2013	330000
Mr. Makhhan Singh	29/9/2012	L-1	1,50,000	29/09/2013	165000
Mr. Govind Prasad,	29/9/2012	L-1	1,50,000	29/09/2013	165000
Miss Suman,	16/8/2012	L-1	10,000	16/08/2013	11000
Mr. Toshib Beg	22/12/2012	L-1	15,000	22/12/2013	16500
Mrs. Alka Rajput,	29/09/2012	L-1	3,00,000	29/09/2013	330000
Mrs. Alka Rajput,	10/10/2012	L-1	4,00,000	10/10/2013	440000
Mrs. Rekha Rajput	10/10/2012	L-1	4,00,000	10/10/2013	440000
Mrs. Rekha Rajput	29/09/2012	L-1	3,00,000	29/09/2013	330000
Mr. Premnarayan	29/09/2012	L-1	3,00,000	29/09/2013	330000
Total			23,25,000		

- x. It is however, noted that there is no mention of fund mobilization from the public in balance sheet of the company for 2012-13, obtained from MCA website. Incidentally, this financial statement has neither been signed by any of the directors nor by the auditor. It is however, noted that the audited financial statements for the FY 2011-2012 and 2012-2013, forwarded by the company vide its letter dated August 27, 2014 contain the details of "*Advances received against plot*", which are as below:

- As on March 31, 2012 is ₹14, 26, 293/-
- As on March 31, 2013 is ₹41,09, 293/-

- xi. Even the website of the group company (M/s Future Shine Corporation India Ltd.), <http://futureshine.co/> also mention that Future Gold Infrabuild India Ltd. has provided opportunities to its agents to earn more commission on various plans/ schemes offered. The company vide its letter dated August 27, 2014 has also admitted that money were taken from "*applicants*"/investors towards agricultural and its development.

9. The details of the '*Scheme*' offered by the company have to be considered in light of Section 11AA of the SEBI Act. The said 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.”*

9.1 In the context of the abovementioned Section 11AA of the SEBI Act, the “Scheme” offered by the company 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.

It is apparent from the scheme offered by Future Gold as noted from the "brochure", "Application cum Agreement", and the "Certificate" that the company is collecting funds from general public towards its scheme for the "sale/purchase, development and maintenance of land" through various plans as detailed in Paragraph No.9.1 (v) above. It is observed from the schemes offered in the brochure, application form and the certificate provided by the complainants that there is no specific mention of the location of the plot. However, various clauses of the "Application cum Agreement", state that the funds are utilized for land purchase and land development expenses. As per the terms and conditions of the

application, "The land shall be allotted in the name of the applicant in case of lump sum payment after 90 days of receipt of full payment but in case of installment payment plans land shall be allotted after 60 days of receiving of 50% consideration amount". It is however observed that none of the aforesaid documents of the company specify any time period within which the land/plot is to be transferred to the "applicant"/investor by way of a sale deed. Further the agreement states "*....since fragmentation into smaller size to land units/lands may not be practicable, feasible or permission under the relevant revenue laws, the customer shall have the requisite share along with other allottees in a particular piece of land Future Gold shall execute/procure execution and registration of sale deeds/deeds ensuring the title and interest of allottees/transferees in the joint holding with other customer. Accordingly, symbolic possession of the plots shall be handed over to the customer*".

Therefore, it is clear that the payments or the contributions collected from the "applicant"/investor are pooled and utilized by Future Gold for the purpose of scheme. The instant 'scheme', therefore satisfies the first condition of "pooling of contribution or payments", stipulated in Section 11AA(2)(i) of the SEBI Act.

- (ii) ***The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.***

The "Certificate" issued to the "applicant"/investors indicate an "expected cost of product at the end of the term"/return/profit. From a copy of the "Certificate" issued by the company (furnished by the complainants), it is noted that an investor opting for "Plan L-1" for a period of 1year (Lump Sum Instalment Plan), where the "Consideration/Cost of product" is mentioned as ₹3,00,000/-. After the term period of 1 year, the investor is entitled to an "expected cost of the product " of ₹3,30,000/- i.e. he/she is entitled to an amount of ₹30,000/- as profit/return. It is also relevant to note that the aforesaid certificate also states "*..... the company shall pay in Indian Currency at its customer service centre through Head Office, the amount due under this certificate in accordance with the terms of schedule to the person to whom the same is herein expressed to be payable*". In view of this, it is apparent that contributions of the "applicants"/investors (whether by instalments or lump sum payment) are made to such scheme or arrangement with a view to receive the profit/return in the form of "expected cost of product". I therefore, find that the instant

'scheme' also 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, application form and the certificate that contributions by "applicant"/investor (whether by installment or lump sum payment) are given to the company who in turn manage these funds on behalf of investors during agreed term of plan. Following clauses in the "*Application cum Agreement*" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by Future Gold, 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,

- *"Future Gold shall carry out necessary works by conducting the survey, demarcation, clearing and other related jobs works on behalf of the customer.*
- *...the company shall have the right to develop and maintain the said property in consultation with experts, and customer shall not ordinary interfere with the method and mode of development and maintenance of the said property,.....*
- *In case the customer is not possible to sell the allotted land due to some local/revenue law. Future Gold reserves the right to allot another piece of land in place of previous allotment and in this case customer have option to receive the amount as per plan opted by him/her"*

The aforesaid clauses clearly indicate that the property, contribution or investment forming part of the scheme, is managed solely by Future Gold 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) & (iv) of the SEBI Act, 1992.

10. It is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013)*, wherein the Hon'ble Court had occasion to adjudge on a scheme having features similar to the instant Scheme

towards "Sale/Purchase, development and maintenance of land", as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

"A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor concerned.PGFL under the guise of sale and development of agricultural land in units of 150 sq. yards. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land..... In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion. ...

10.1 In light of the aforesaid observations of the Hon'ble Supreme Court of India in the **PGFL Case**, and also in view of the peculiar characteristics and features of the scheme, (as discussed in the preceding paragraph No. 9.1 above), I find that the fund mobilizing activity of Future Gold, under the garb of a real estate business for the sale/purchase, development and maintenance of land falls squarely within the parameters of the concept of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

- 11.** The main contention raised by Future Gold in its reply is that they are engaged in the business of purchase and sale of agricultural land and its development, that company does not promise any assured return and that the scheme of company does not come within the definition of collective investment scheme. In this context, it is observed that Future Gold has been inviting applications for advance against plot/ land, for agricultural purpose. As already mentioned in the preceding paragraphs, no plot/land is identified or distinguished by Future Gold either at the time of execution of the "*Application Form cum Agreement*" or at the time of making 50% or full payment of consideration amount as the case may be. It is also observed that even though the agreement mentions about the transfer of title and possession in favour of the '*applicant*'/investor by means of a registered sale deed, only symbolic

possession of land is handed over to the '*applicant*'/investor when fragmentation into smaller size is not practicable, feasible or permissible. The "*applicant*"/investor will be jointly holding the land along with the other '*applicant (s)*'/investors. From the above, it is clear that Future Gold has no intention to create ownership rights, which are transferable, as in the case of a real estate transaction. In a real estate sale transaction, the land is identified and located upfront and thereafter is sold to individual purchasers. The land as well as the subject matter of development is clearly identified by delineating and defining boundaries in the agreement for sale itself, so that the developed land is finally transferred to the individual purchaser in terms of the agreement. In view of the above analysis, it is observed that the afore-mentioned facts do not indicate that the Scheme towards "*Sale/Purchase, development and maintenance of plot*" being conducted by Future Gold is akin to or has any characteristics of a real estate business. It is further observed from the certificate issued by the company that the company shall pay to the '*applicant* '/investor the amount due as per the certificate. Therefore, in my view the fund mobilizing activity of Future Gold, which is in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act, promising an estimated returns/profit, has been camouflaged by Future Gold by terming it as a "*business of purchase and sale of agricultural land and its development*" only to mislead and attract investment from general public. The '*scheme*' in essence satisfies all the conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act. Therefore, the contention put forth by Future Gold that it is carrying out a "*business of purchase and sale of agricultural land and its development* " and does not offer any assured returns is not acceptable.

12. 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, Future Gold 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.

13. It is further noted that Mr. Dharendra Singh Kushwaha, Mr. Satyendra Singh, Mr Vineet Kumar Phalke and Mr. Afasar Khan are the present directors and Mr. Dinesh Singh Bhadoriya is the past director of Future Gold. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person is in violation 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 Future Gold in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that Future Gold is illegally mobilizing funds from the public, which *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.
14. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that Future Gold and its promoters/directors do not collect further funds under its schemes and to safeguard the assets/property acquired by Future Gold 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. In the light of the same, I find no other alternative but to take recourse through an interim measure against Future Gold and its promoters/directors.
15. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct M/s Future Gold Infrabuild India Limited (PAN: AABCF3920E) and its Promoters/Directors *viz.* Mr. Dharendra Singh Kushwaha (PAN: BGGPK7521R), Mr. Satyendra Singh (PAN: CDDPS5928P), Mr Vineet Kumar Phalke (PAN: APDPP0190C), Mr. Afasar Khan (PAN: CLHPK5064N) and Mr Dinesh Singh Bhadoriya (PAN: AJJPB1169R):

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 Future Gold out of the amounts collected from the "applicants"/investors under its existing schemes;*
- f. to furnish all the information sought by SEBI, including,*
 - i. copies of all the relevant documents of the company viz: application form, agreement, certificate issued by the company etc.,*
 - ii. the details of amount mobilized and refunded till date,*
 - iii. Scheme wise list of investors and their contact numbers and addresses, including,*
 - the list of investors to which land has been allotted and got registered, and*
 - list of investors who have been refunded.*

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

17. This Order shall also be treated as a show cause notice. Future Gold and its abovementioned Promoters/Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions for winding up of such plans/schemes in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them.

18. Future Gold 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. They may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: March 13, 2015

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