

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

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 in the matter of Shri Ram Real Estate and Business Solution Limited(PAN: AAMCS4086P) and its Directors viz., Mr. Sanjay Mewada(PAN: ASCPM1521A), Mr. Babaloo Prajapati (PAN: AMQPP8230M), Mr. Gopal Meena (DIN: 06770974), Mr. Subhash Deshmukh (DIN: 03119711), Mr. Nirmal Dhaneliya (PAN: ASNPD779611), Mr. Vijay Singh, Mr. Sohan Kumar Patel and Mr. Jagdish Meena.

- (1) Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint dated June 03, 2013 alleging that Shri Ram Real Estate and Business Solution Limited (hereinafter referred to as "**SRREBSL/the company**") has been raising funds from the public assuring high returns. The complainant also furnished documents such as sample application form, brochure/booklet and sample copy of an agreement.
- (2) As a matter of preliminary inquiry into whether or not SRREBSL was carrying on activities of '*collective investment scheme*' in terms of Section 11 AA of the SEBI Act, 1992 ("**SEBI Act**"), SEBI vide letters dated July 03, 2013 and December 04, 2013, *inter alia*, sought the information/documents from SRREBSL viz., :-
 - a. Memorandum and Articles of Associations of the company as filed with the Registrar of Companies ('**RoC**').
 - b. Details of the past and present directors of the company.
 - c. Brochures pertaining to SRREBSL schemes/ offers which were made available to the public.

- d. Copies of applications forms that are required to be submitted by investors/applicants to participate in the schemes.
 - e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes.
 - f. Sample copies of the agreement letter/ contract required to be entered into by investor/applicant under the schemes.
 - g. Details of the scheme wise amount mobilized till date along with the number of investors under the schemes.
 - h. Name, address of each investor and amount deposited by each of them.
 - i. Address of all the branches of SRREBSL operating in India.
 - j. Certified copy of audited financial statement for the FY 2009-10, 2010-11, 2011-12 and 2012-13. Trial Balance for 2013-14 (from April 2013 till date of submission of information).
 - k. Copy of Income Tax Return filed by the company for the last three years.
 - l. Details of any other similar scheme(s), if any, floated by the company or its group/associates company.
- (3) The aforesaid letter was sent by registered post with acknowledgement. However, no reply was received from SRREBSL and its Directors. It is noticed that letter sent to the company and one of its Directors viz., Shri Sohan Kumar Patel was acknowledged. However, letters sent to other two Directors viz., Shri Vijay Singh and Shri Subhash Deshmukh were returned by the postal authorities.
- (4) On December 19, 2013, SEBI received the following documents/information :-
- (a) Original unit certificate issued by SRREBSL to its registered “Joint Venturer” namely Shri Ashok Bagan. The said certificate was issued in respect of plan S-5 (5 years) on February 20, 2010.
 - (b) Copy of a unit certificate issued by SRREBSL to its registered “Joint Venturer” namely Shri Ashok Mishra. The said certificate was issued in respect of plan S-6 (of 5 years & 6 months) on February 11, 2010.
 - (c) Copy of a property seizure memo of Madhya Pradesh Police dated December 01, 2011 indicating action initiated against SRREBSL.

- (5) As no information was received from SRREBSL in reply to SEBI's letters dated July 03, 2013 and December 04, 2013, another reminder dated January 21, 2014 was issued to SRREBSL and its Directors/Chairman by registered post with acknowledgement. The copy of the complaint and documents were enclosed with the aforesaid letter and sought explanation on the same. SRREBSL was also advised to provide the complete details sought vide SEBI's letters dated July 03, 2013 and December 04, 2013. However, the said letters of SEBI once again got returned undelivered.
- (6) In view of non-receipt of reply, another letter dated March 18, 2014 was issued to the Delhi address of SRREBSL as well as to new Directors of the company viz., Shri Babaloo Prajapati and Shri Gopal Meena. In response thereto, SRREBSL vide letter dated April 07, 2014 sought additional time of 30 days to reply to the letters of SEBI. Subsequently, SRREBSL vide letter dated May 07, 2014 furnished documents such as Memorandum and Articles of Association, Certificate of incorporation and commencement of business and copy of PAN. In respect of other relevant information, SRREBSL again sought 30 to 45 days time.
- (7) Thereafter, SRREBSL vide letter dated June 21, 2014 furnished details of plans offered, List of customers, List of property, list of Branches, Certified copies of Audited Financial Statements for the FY 2009-10, 2010-11, 2011-12 and 2012-13. SRREBSL vide the aforesaid letter submitted "*...we are in the field of Real Estate and running so many projects located at Kalapipal (Shajapur) and Kalma (Devas) and number of plans 16. As our company is a Real Estate Company, there is no investor in it. However, we have so many customers who booked plots in our projects. Till now no property has been executed with local authorities in the name of the customers because not even a single customer has made the full payments. Until payment is due we are unable to register the plot in the name of Customers. We are offering some compensation to our Customers for attracting them for purchasing our plots. It's a part of our business marketing. We are providing help internally from company fund for promoting sales. So, there is no need to take permission from regulatory bodies because these offers are not for public ..*"

(8) I have carefully considered the material available on record such as complaints received by SEBI, correspondence exchanged between SEBI and SRREBSL, information available on *MCA21 portal*, documents furnished by complainant, etc. In this context, the issue for determination is whether the mobilization of funds by SRREBSL under its schemes falls under the ambit of '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act.

(9) On an examination of the material available on record, it is *prima facie* observed that:

(I) SRREBSL (CIN: U70102MP2008PLC021116) was incorporated on September 08, 2008 having its Registered Office at 38, Dal Mill, By Pass Road, Shanti Apartment, Karond, Bhopal, Madhya Pradesh. The details of the Directors of SRREBSL are as under:-

Sl No	Name of the Directors	Address	Date of Appointment/Ceasing
1	Shri Vijay Singh,	R/o Village Piplod, District Shajapur, 456337, Madhya Pradesh	Not available
2	Shri Sohan Kumar Patel	R/o 92, Gram-Anavada, Navada, Tehsil TonkKhurd, Dewas-455116, Madhya Pradesh.	Not available
3	Shri Subhash Deshmukh	R/o 333, Sector B, Sarvdharam Colony, Kolar, Damkheda, Tehsil Hujur Bhopal- 462043, Madhya Pradesh.	Not available
4	Shri Babaloo Prajapati	R/o 286, Gram –Tulaseph, Tehsil-Shyopur, District- Shyopur, Madhya Pradesh-476337.	January 16 , 2014
5	Shri Gopal Meena	R/o A-3, New Jail Road, Elixir Green, Karond, Huzur, Bhopal-462038.	January 24, 2014

(II) As per the information available in the website viz., <http://srgc.biz/> the management team of the group consisted of Shri Sanjay Mewada, Chairman; Shri Nirmal Dhaneliya, Managing Director; Shri Jagdish Meena and Shri Subhash Deshmukh, Directors.

(III) As per Memorandum and Articles of Association, the main objects of SRREBSL is "*to carry on business of development of serviced plots and construction of built up residential premises, real estate covering construction of residential and commercial premises and including business centres and offices,*

factories, technology park, development of townships, city and region level urban infrastructure facilities including roads and bridges..."

(IV) As per the website of the company i.e. <http://shriram.logiphilicsolutions.com>., the main objectives of SRREBSL are as under:-

- (a) Corporate farming, execution of different projects related to real estate;
- (b) Development of agriculture business and agriculture farms through latest technology on agriculture land;
- (c) Construction and development of colonies, housing projects, commercial projects on land adjoining to urban & rural acres;
- (d) To bridge the information gap of different latest technology regarding seeds for different crops, different agriculture employments & their resources through our monthly Hindi Patrika;
- (e) Sale purchase of land in partnership of the Indian/ foreign establishments executive of seals deals & their minority;
- (f) To develop the real estate business with latest thought/ techniques in Madhya Pradesh/ Chhattisgarh and other part of the country;
- (g) To applicant agents on commission basis for all the above mentioned activities.

(V) The information about SRREBSL as noted from the websites [http:// srgc.biz/](http://srgc.biz) and <http://shriram.logiphilicsolutions.com>. are as under-

(a) Shri Ram group of companies (SRGC) were founded in 2008. The group companies are (i) Shri Ram Real Estate and Business Solutions Ltd. (ii) Shri Ram Buildtech Ltd. (iii) Shri Ram Assurance Services Ltd. (iv) Shri Ram Retails pvt. Ltd. and (v) Shri Ram Motels Private Limited. The corporate office of the group is at B-52, 2nd Floor, Sector 63, NOIDA-201301. Telephone No. 01204155741.

(b) SRREBSL has completed projects spread over more than 100 acres in Central India. The CSC (customer service centre) of SRREBSL are located in 13 districts (8 in Madhya Pradesh, 1 in Chattisgarh, 1 in Uttar Pradesh, 1 in Rajasthan and 1 in Maharastra. Further, there are 15 sub CSC in 15 districts (14 in Madhya Pradesh and 1 in Uttar

Pradesh). There are upcoming CSC in 20 districts (7 in Madhya Pradesh, 3 in Chattisgarh, 2 in Gujarat, 3 in Rajasthan, 3 in Uttar Pradesh and 1 in Maharastra and 1 in Tamil Nadu).

(c) One certificate issued on August 14, 2013 by MAP Certifications Private Limited certifying "*Shri Ram Real Estate & Business Solutions Ltd. having address of B-52, Sector 63, NOIDA, Uttar Pradesh has confirmed to ISO 14001:2004 certificate No. M/IN-EH135017 for development, construction, marketing of infrastructure such as townships, residential & commercial complexes*".

(d) Another certificate issued by SG Certifications Private Limited certifying "*Shri Ram Real Estate & Business Solutions Ltd. having address of Aribant Complex, Plot No. 28, Mandakini Campus, Opp. Vishal Mega Mart, Kolar Road, Bhopal has met the requirements of ISO 9001:2008 of quality management system in the activity of builders & infrastructure developers*".

(VI) On perusal of the documents provided by the complainant the following are noted:-

(a) The brochure containing the schemes/ plans of the company indicate that SRREBSL collects funds from the public through its various payment plans towards its sale and development of plots.

(b) As per the brochure, the payment plans offered by SRRESBL were:

- *Installments plans viz. Plan No. S-3 (for 3 years), Plan No. S-4 (for 4 years), Plan No. S-5 (for 5 years), Plan No. S-6 (for 5 years), Plan No. S-7 (for 6 years), Plan No. S-8 (for 6 years 6 months), Plan No. S-9 (for 7 years 6 months), Plan S-16 (for 10 years).*
- *Money Back Plan No. MB-12 (for 12 years) and Monthly return if opted (MIS plan).*
- *lump-sum plan No. SL-1, SL-2, SL-3, SL-4, SL-15 and Sl-20.*

(c) A sample of installment plan and lump sum plan is tabulated as under:-

Plan No S-5 (for 5 years) or 60 months

In ₹

No. of units	Instalments				Consideration	Expected sum payable on Expiry	Accidental help
	Monthly (Rs.)	Quarterly (Rs.)	Half-yearly (Rs.)	Yearly (Rs.)			
1	100	295	580	1150	6000	8500	9000
2	200	590	1160	2300	12000	17000	18000
3	300	885	1740	3450	18000	25500	27000
4	400	1180	2320	4600	24000	34000	36000
5	500	1475	2900	5750	30000	42500	45000
6	600	1770	3480	6900	38000	51000	54000
7	700	2065	4060	8050	42000	59500	63000
8	800	2360	4640	9200	48000	68000	72000
9	900	2655	5220	10350	54000	76500	81000
10	1000	2950	5800	11500	60000	85000	90000

Note: Unit= Plot

Lump Sum Plan No. SL-3

In ₹

No. of units	Consideration	Plan No SL-1 (3 years)	Plan No.- SL-2 (6 years)	Plan No. SL3 (8 year)	Accidental Help
1	5000	7000	10000	12600	7500
2	10000	14000	20000	25200	15000
3	25000	35000	50000	63000	37500
4	50000	70000	100000	126000	75000
5	100000	140000	200000	252000	125000
6	200000	280000	400000	504000	125000

Note: Unit= Plot

(d) In addition to the "expected sum payable on expiry" after the end of the agreement period, SRREBSL also offers accidental help to its customers/ investors.

(e) The investors who are interested in the aforesaid schemes/ plans of SRREBSL are made to initially submit an application form containing the following details: (i) Application Number, Regional office and customer service centre of the company. (ii) Details of plan chosen viz. Category plan No., Term of plan, date of commencement, date of expiry, consideration, mode of payment, installment, total amount. (iii) Details of initial payment

- made to the company (iv) Particulars of applicant (v) Details of nominee, in case of death. The investors are termed as "*Joint Venturer or Customer*".
- (f) Thereafter, the '*Joint Venturer/Customer*' has to execute an "*Agreement*" with SRREBSL in respect of sale of plot of land and its development. Further, '*Joint Venturer/Customer*' also has to give power of attorney in respect of plot. On receipt of the contribution/consideration from the "*Joint ventures/Customer*," SRREBSL issues a "*Certificate*" to the investor wherein details of registration number and date, plan number/term, consideration unit size, mode of payment, amount of installment payable, Assured Realizable Value at the end of the term, Date of last installment, Date of realizable value at the end of the term, agency code, name and address of the '*Joint ventures/Customer*' etc are mentioned. It is noted that the said '*Certificate*' states that it is issued subject to the "*General Terms and Conditions*" printed overleaf and terms and conditions as per the '*Rule Book*'.
- (g) As per the brochure, there are 27 existing customer service centres of the company (9 in Madhya Pradesh, 6 in Chhattisgarh, 2 in Uttar Pradesh, 5 in Rajasthan, 3 in Maharashtra, 1 in Odisha and 1 in Andhra Pradesh) and 17 sub-customer service centres (11 in Madhya Pradesh, 3 in Rajasthan, 2 in Uttarakhand and 1 in Maharashtra). Further, 23 new customer service centres are proposed (5 in Madhya Pradesh, 5 in Uttar Pradesh, 3 in Maharashtra, 1 in Chattisgarh, 2 in Rajasthan, 2 in Gujarat, 2 in Bihar, 1 in Andhra Pradesh, 1 in Tamil Nadu and 1 in Uttarakhand).
- (h) It is noted from the booklet/brochure that in order to attract investors SRREBSL has mentioned (i) Copy of a plot allotment certificate issued by the company in favour of investor (ii) photocopy of few land purchased by the company (iii) details of various plans. (iv) Copy of a letter with demo cheque paid towards accidental help by the company (v) Copy of a letter with demo cheque paid towards expected sum payable at the end of term by the company. (vi) procedure for becoming an agent of the company, etc.

- (i) It is mentioned that the company has purchased land in district Ballod (Chatisgarh), Bombay Agra Road, Dewas (Madhya Pradesh), Sehore –Sujalpur bypass (Madhya Pradesh), Sehore- Kurab (Madhya Pradesh), Agra Road, Shajapur (Madhya Pradesh), Bhopal Indore Highway (Madhya Pradesh), Mhow Road, Dhar (Madhya Pradesh), Chinnor Road, Gwalior (Madhya Pradesh).

(VII) It is noted from the website of Ministry of Corporate Affairs (MCA) that company has uploaded annual report for financial year 2008-09 & 2009-10. The annual report/ balance sheet for subsequent financial years are not available. The observations from these annual reports are as below:-

- (a) It is noted from annual report for 2009-10 that the Directors of SRREBSL were Mr. Vijay Singh, Mr.Sanjay Mewada, Mr. Nirmal Dhaneliya, Mr. Vikram Singh and Mr. Gyan Singh.
- (b) It is noted from the Annual Report for the FY 2009-10 (as downloaded from *MCA21 portal*) that SRREBSL had raised “*Deposit from shareholders and members*” of ₹34,12,034/- as on March 31, 2009, which increased to ₹ 3,68,05,780/- as on March 31, 2010. It is noted from these balance sheets that company has not purchased any land during 2008-09 and 2009-10. It is also noted that company held cash in hand of ₹35,87,354/- as on March 31, 2009, which increased to ₹3,09,60,909/- as on March 31, 2010. It is noted that there is correlation between increase in cash in hand of the company with “deposit from shareholders and members”. This implies that funds are being mobilized by the company in form of “deposit from shareholders and members”.
- (c) As per para H of the Director’s Report mentioned in annual report of 2009-10, “*Company has accepted deposits from the shareholders. The amount so accepted is repayable on demand. The interest on such deposits has not been provided in the company. In addition to this the company has also distributed Commission Rs.482930 (previous year Rs.71,383) to collect the same. As informed the company has merely collected the deposit from the shareholders hence the provisions of issuing prospectus or section 45 of the Reserve Bank of India Act are not applicable to it. The company has not produced before us any documents with respect to value payable at the time of maturity of the deposit or with respect to any possible interest thereon. Hence we cannot make any comments upon the terms of acceptance of such*

deposits whether it is prima-facie prejudice to the interest of the company. The company is accepting money since inception and as informed to us amount has been matured for payment and further board of the company has represented us that despite of accumulated losses to the extent of Rs.2811111.29 the company on demand can repay the deposit to its shareholders.”

- (d) The auditor's in their report dated July 10, 2010, “*the company has not accepted any deposits from the public however it has accepted deposits from shareholders, directors, friends and their relatives.*”
- (e) It is noted from the copy of certificates issued to Mr. Ashok Mishra (who applied for plan S-5 on February 11, 2010) and Mr. Ashok Bagan (who applied for plan S-5 on February 20, 2010) that SRREBSL mobilized funds from public towards its schemes. The certificates address the investors as “*Joint-venturer*”. There is no mention on these certificates (as well as on sample application form and model agreement) that they were shareholders, directors, friends and their relatives. It has not specified the people to whom these shall be circulated. Furthermore, SRREBSL paid ₹4,82,930/- as commission (FY 2009-10) and ₹21,06,357/-(FY 2010-11) to its agents for raising funds from the general public. Moreover, money mobilized is for purchase of units of the company. It is mentioned in the brochure that one unit is equal to a plot of land.
- (f) It is noted from the reply filed by SRREBSL that as on March 31, 2013 43 Customers had invested ₹1,79,45,659/- in the project at Kalapipal (Shajapur) and 22 customers had invested ₹99,77,776/- in respect of project at Kalma (Dewas).
- (g) As per the annual reports furnished by SRREBSL, the “*advance received from customers*” were ₹2,79,23,435/- as March 31, 2013. The land held for projects was for ₹ 30,58,480/- as on March 31, 2013. The company paid ₹25,72,500 as commission to its agents during 2012-13.
- (12) The details of the ‘*Schemes*’ towards the purchase and development of plot/land offered by SRREBSL 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) In the context of the abovementioned Section 11AA of the SEBI Act, the “Scheme” offered by Shri Ram Real Estate & Business Solution Ltd. 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 noted from sample 'application form cum agreement', 'brochure', 'marketing pamphlets' and 'certificates' issued to the investors that SRREBSL is raising funds from the general public through its various Payment Plans as detailed in paragraph no. 9(VI) above. The investors are termed as “Joint Venturer or Customer”. It is noted from the schemes offered in the brochure/ application form/registration certificate that there is no specific mention of the location of the plot. Though 'Plot Allotment Certificate' specifies the survey number and location of the land, the sale deed is not executed and registered even after the so called act of “allotment” by SRREBSL. As per the copy of the 'Plot Allotment Certificate' given to a customer, it is mentioned "Shri Ram group reserves the right to change the location of this allotment and allot an alternate site any other place'. Moreover, the customer has also not applied for any specific plot of land in the application to the company. It is

noted from the *agreement* that the funds raised from investors are stated to be used for the procurement and development of the land by the company. In view of the above, it is evident funds from customers are pooled and stated to be utilized for purpose of the scheme. It is noted with concern that the company has tried to camouflage this pooling of funds as “*deposits from shareholders and members*” in its annual report of 2009-10. SRREBSL failed to upload the annual reports/ balance sheet for subsequent years on MCA website and also failed to reply to repeated letters from SEBI seeking information about its fund mobilization from public. 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 SRREBSL which is pooled and utilized solely for the purposes of the schemes offered by SRREBSL. 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) 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 various payment plans offered by SRREBSL, it is noted that in case of Instalment Payment Plan viz., *Plan No. 5 for 5 years or 60 months*, for the consideration amount of ₹6,000/-, the *Joint Venturer/Customer* is offered an "*expected sum payable on expiry*"/profit/return of ₹8,500/- after 5 years. In addition to the aforesaid, SRREBSL is also providing an amount of ₹9,000/- as '*accidental help*'. In order to attract the general public towards the schemes/plans offered by SRREBSL, advertisement of timely payment to an investor at the end of expiry period (total amount paid by company ₹2,68,45,250/-) and '*Accidental help*' (total amount paid by the company ₹38,45,250/-) are mentioned in the booklet/brochure issued by the company.

Thus, it is apparent that the contributions by the '*Joint Venturers/Customers*' (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive expected sum payable in form of cash/ or land and also accidental help in time of need from such scheme or arrangement. I, therefore, find that the instant scheme satisfies the second condition stipulated in Section 11AA 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 cum agreement' and certificate issued to investors that contributions made by the 'joint venturer/customer' (whether by instalment or lump sum payment) are given to the company who in turn manage these funds on behalf of investors during agreed term of plan. It is noted that SRREBSL agrees to allot plots to the customer/investor but the said allotment is at SRREBSL's sole discretion. Even after the "allotment", where the location and survey number of the land is mentioned in the 'Plot Allotment Certificate', SRREBSL reserves the reserves right to change the location of the allotment of land and allot an alternative site at any other place. Furthermore, as per the terms of 'Agreement', SRREBSL reserves the right to modify the terms of participation, discontinue/change/amend/modify any of the Rules and regulations and Plans and introduce any new plans at any time at its sole discretion with or without any notice". The following clauses in the "Application cum Agreement" also indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by SRREBSL, 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,:

- As per Clause 11 "...The plot cannot in any manner be sold, assigned, mortgaged, pledged or alienated without obtaining NO DUES CERTIFICATE from the company in case of Installment payment plans till payment of full consideration attributable to the cost of land and execution of registered sale deed."
- As per Clause 12, "The company shall provide such irrigation system as it may deem appropriate which shall be part of the overall irrigation system depending upon the nature of soil, crop pattern of the plot etc. in consonance with the expert advise received by the company. The company upon planting the saplings, plants, crops, trees etc. over the aforesaid plot, shall use necessary fertilizers, pesticides etc., as it may deem appropriate."

- As per Clause 13, *“The company shall employ its own technical experts, advisors and such other personnel, as it may consider necessary for the purpose of carrying out its obligation as per this agreement, and shall pay their fees/ salary/ wages and the entire expenses incidental thereto.”*
- As per Clause 14, *“For the purpose of arranging the sale of the produce, as listed in next paragraph, the company shall have the sole discretion to decide as to whether the produce shall be sold in the wholesale market and / or in the semi-wholesale market, and/ or to one or more marketing company or may decide to sell it to any other market which the company may consider appropriate for the sake of a particular grade of the produce.*

Unless specifically otherwise directed by the customer, the company shall be responsible for arranging the sale of the produce, if any, on behalf of the customer. The task of sale of the produce undertaken by the company under the provision of the aforesaid clause shall be subject to the condition that depending upon the grade of the produce harvested from the plot, market conditions and other relevant factors, the company may decide to sell the produce at such price which it may deem fit and reasonable in the circumstances prevailing at that point of time. It shall be the endeavor of the company to sell the product at the best price prevailing prices and terms. The customer shall accept the net sale proceeds, so obtained by the company from the sale of the said produce as final and no dispute shall be raised in respect of the same.”

In light of the above facts and circumstance, it is clear that the 'customer(s)'/investors do not have day-to-day control over the management and operation of the schemes offered by SRREBSL ' and that the 'customer'(s)/ investors do not, at any stage, manage the property, contribution or investment forming part of the 'Schemes'. In view of the above, I find that the instant 'Scheme/ Plan(s)' satisfy the third and fourth conditions stipulated in section 11AA(2) of the SEBI Act.

- (14) In view of above analysis and examination, I find that the schemes offered by SRREBSL inviting investments from public, when considered in the light of peculiar characteristics and features of such schemes, as detailed in the preceding paragraphs, *prima facie* satisfy all the four conditions of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

- (15) I note that Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013) (hereinafter referred to as "*PGFL Case*"), while analyzing the scope of sub-section (2) of Section 11AA, held that: *"..sub-section (2) of Section 11 AA, 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 there from."*
- (16) Although SRREBSL vide its letter dated June 24, 2014 submitted that it is in 'Real Estate' business, it is apparent from the above discussions that the schemes offered by SRREBSL is camouflaged as a real estate schemes. In a real estate transaction, the land is identified and located upfront and thereafter 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. These essential features are absent in the schemes offered by SRREBSL or in any of the documents executed in this connection. It is thus clear that the schemes do not really amount to real estate transactions as claimed by SRREBSL.
- (17) 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 SRREBSL 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.

- (18) I also find that the activity of illegal mobilization of funds by SRREBSL 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").
- (19) 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 SRREBSL and its Directors (past and present) do not collect further funds under its scheme/Plans and to safeguard the assets/property acquired by SRREBSL 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 SRREBSL 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.
- (20) In view of the foregoing, 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 Shri Ram Real Estate and Business Solution Limited and Directors viz., Mr. Sanjay Mewada, Shri Babaloo Prajapati, Shri Gopal Meena, Shri Subhash Deshmukh, Shri Vijay Singh, Shri Sohan Kumar Patel, Shri Nirmal Dhaneliya and Shri Jagdish Meena:
- *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 SRESBL;*
 - *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by SRESBL;*
 - *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of SRESBL;*
 - *to furnish all the information/details sought by SEBI vide letters dated July 03, 2013, December*

04, 2013 and January 21, 2014 within 15 days from the date of receipt of this order, including,

- i. Details of amount mobilized and refunded till date,
- ii. Scheme wise list of investors and their contact numbers and addresses,
- iii. Details of commission paid on amounts mobilized above,
- iv. Details of agents along with their addresses, etc.,
- v. Audited Accounts for the last financial year and
- vi. PAN of aforementioned Directors.

(21) The above directions shall take effect immediately and shall be in force until further orders.

(22) This order shall be treated as a show cause notice and MBLDL and its directors may show cause as to why the plans/ schemes identified in this order should not be held as a '*collective investment scheme*' in terms of the Section 11AA of the SEBI Act and the CIS Regulations and why appropriate directions under the SEBI Act and CIS Regulations, including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.

(23) The *prima facie* observations in this Order are based on the material available on record. In this context, SRREBSL 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.

Date: March 17, 2015

S. RAMAN

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA