

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 respect of V3 Infrastructure and Estates Private Ltd (CIN:U45202KA2009PTC051123) and its Directors/Promoters, viz. Mr. Virupapur Santosh Kumar (DIN:02424867); Mr. Virupapuram Madhusudhan (DIN: 02666865) and Ms. Hindupuram Sireesha (DIN: 02424858).

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint dated January 28, 2014 alleging that V3 Infrastructure and Estates Private Ltd (hereinafter referred to as ‘V3 Infra’/the company) and its Directors were mobilizing huge amounts of moneys from the public, guaranteeing refund of double the amount invested. It was also alleged that V3 Infra failed to refund the money on receipt of redemption requests from the investors. The complainant also forwarded the following documents,
 - Sample copy of “Welcome letter”, issued by a group company of V3 Infra, viz. “V3 One (A V3 Group Enterprise)”,
 - Sample copy of “Pamphlets”, issued by V3 One
 - A copy of “Agreement Deed” executed between a customer/investor and V3 Infra,
 - List of investors and amount invested by them.
2. As a matter of preliminary examination into the alleged fund mobilization by V3 Infra, SEBI examined the details of the company available on MCA website. Based on the information available on the website, including the details regarding the registered office of the company and details of its directors/promoters/share holders, SEBI vide letters dated February 13, 2014, March 06, 2014, May 14, 2014 etc., sought the following details/documents from the company and its Directors, in relation to their business activities:

- a. Brochures, pamphlets, pertaining to schemes,
- b. Sample copies of the agreement letter / contract required to be entered into by investor /applicant under the scheme(s).
- c. Copies of sale deed entered with a buyer,
- d. Main terms and conditions of the plan / scheme(s).
- e. Details of the scheme wise amount mobilized, along with the number of investors under the scheme(s).
- f. Details of the scheme wise amount mobilized,
- g. Total number of investors who had deposited money in such schemes,
- h. Total amount mobilized by the company,
- i. Copies of annual reports/financial statements for the last three years.

2.1 The letters addressed to V3 Infra and its Directors were returned as undelivered. Till date, no information has been received by SEBI from either V3 Infra or its Directors.

2.2 A physical inspection was conducted by SEBI on May 27, 2014 at the office address of V3 Infra at Bangalore, wherein it was found that the office of the company was closed. On enquiry, it was gathered that V3 Infra was operating from the said premises about a year ago. It was also gathered that the company had shut down its offices in other parts of Karnataka too.

3. I have carefully perused documents and materials available on record such as complaints received by SEBI against V3 Infra along with the documents contained therein such as *Welcome letter*", "*Pamphlets*", "*Agreement Deed*", and documents/information available from the MCA website. In this context, the issue for determination in the instant matter is whether the mobilization of funds by V3 Infra is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act").

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

- i. V3 Infrastructure and Estates Private Ltd (CIN: U45202KA2009PTC051123) was incorporated on October 18, 2009 and has its registered office at 1st Floor, Naswale Buildings, Hospet Road, Koppal, Karnataka, 583231.

- ii. The Directors are Mr.Virupapur Santosh Kumar, Mr.Virupapuram Madhusudhan and Ms Hindupuram Sireesha.
- iii. From the copy of the "Agreement Deed" in respect of the scheme "Own your Property" (between V3 Infra and investors), forwarded by the complainant, it is observed that V3 Infra invites funds from the public for the *scheme* known as "own your property", upon filing of application forms by the investors who are interested in the scheme offered by V3 Infra. Following Clauses are noted from the sample copy of "Agreement Deed" entered into by V3 Infra with one of the 'subscribers'/investors:

"THIS DEED WITNESSES AS FOLLOWS

Upon the application submitted by the subscriber for the scheme of "own your property" with V3 Infrastructure & Estates Pvt.Ltd.Co. It is agreed by both the parties to the contract as under.

- 1. Whereas, the subscriber/second party with his application has paid an amount of Rs,20,000/- by Cash/DD NO...NA... and agrees to pay instalments if any towards total consideration amount and in acceptance the company/first party promises to pay, by valuing the consideration amount, on the date of Valuation of the said property, under the scheme as stated in the schedule herein under or the company/first party promises to transfer the landed/house property more specifically described in the schedule herein under worth of valued amount. The subscriber agrees to elect any one mode either refund of the valued amount or the property worth of the valued amount and the company agrees to perform the mode so elected by the subscriber.*
 - 2. Whereas, the parties hereby agree to contract subject to the terms and conditions annexed herewith.....*
 - 3. Whereas, the company/first party promises to give the subscriber/second party all the benefits under the policy in the scheme more specifically described in the schedule herein under and the company give a security for the same.*
- iv. The "schedule" attached to the aforesaid agreement contains the following detail:

- Name and address of the subscriber/investor,
 - Application number,
 - Total amount payable to the company and mode of payment,
 - Value of the property offered by the company,
 - Description of the property.
- v. It is also observed from "*Schedule*" attached to the agreement deed that if the investor does not opt for any property, then an amount, comprising of the total amount invested by the company along with the value of the property offered by the company, would be refunded at the end of the scheme period.
- vi. The following clauses are noted from the "*Terms and Conditions*" annexed to the "*Agreement Deed*":
1. The buyer can obtain a Flat/Plot against the subscription in any of the layout provided by the company at the end of payment period the cost of the property will be decided as per the selection of the Flat/Plot the actual size and location. If there is any price variation, the difference will be levied/refunded as the case may be.
 2. In case after end of the period of payment if the buyer does not opt for the property and requested for refund of subscription amount and if the company fails to refund along with the assured compensation then the subscriber reserves the right to take possession of the said property in the schedule equalling to the assured compensation value.
 3. REVIVAL OF DISCONTINUED MEMBERSHIP: *a discontinued membership may be revived at any time before one year completion of the scheme on payment of all the dues, together with compound interest @15% on arrears.*
 4. PREMATURE WITHDRAWAL FACILITY: *No prematurity withdrawals.*
 5. REFUND OF DISCONTINUED MEMBERSHIP: *If the subscriptions are not paid within the days of grace, the membership will be treated as discontinued but the amount paid there under shall not be forfeited and shall be refunded at the end of the scheme period on written request compensation will be calculated at 4% and 5%.*
 6. SPECIAL PROVISIONS OF REFUND IN CASE OF DEATH:.....

7. The company reserves the right to alter or amend any or all the terms and conditions stipulated above without assigning any reasons thereto and without any prior notice so long such alterations/amendments or not inconsistent with the concernment authorities or the amendments thereto from time to time.
 8. The company reserves the right to refuse any application for purchase of Plot/Flat under these schemes without assigning any reason and reserves the right to refund the property advance any time before the end of the scheme period.
 9. *The company's interpretation of the terms and conditions shall be final.....*
- vii. It is further noted from the said "schedule" that the property described in the said schedule is conveyed by way of the aforesaid agreement as "Collateral Security" to the value of the amount paid by the subscriber/investors.
- viii. It is relevant to note that no information could be gathered about the total mobilization of money pooled from the public by V3 Infra, total number of investors, details of the scheme, etc. as the letters sent to the company and its Directors have been returned as "Undelivered". The above observations are on the basis of the information/material forwarded by the complainant. As per the list of investors forwarded by the complainant an amount approximately Rs. 31 lakhs has been collected by V3 Infra from 78 investors.
5. The aforementioned features of the so called "Own your property" by V3 Infra have to be considered in light of Section 11AA of the SEBI Act, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme':
- "(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.”*

6. In the context of the abovementioned Section 11AA of the SEBI Act, the “*scheme*” offered by V3 Infra, 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.

V3 Infra collects funds from the “*subscribers*”/investors” in lump sum or in instalments with an assurance to return an amount as “*value of the property offered by the company*”/return/profit or in the alternative to transfer the land/house property at the end of the maturity period. It is noted from the “*Schedule*” to the “*Agreement Deed*” entered into by V3 Infra with one “*subscriber*”/investor that an amount of ₹20,000/- has been collected from the ‘*subscriber*’/investor and it has offered an amount of ₹40,000/- as “*Value of the property offered by the Company*”/profit/return against the said subscription amount of ₹20,000/- after two years. It is important to note that though plot/land is identified and demarcated in the “*Schedule*” forming part of the “*Agreement Deed*”, the ownership of the said land/plot forming part of the scheme is not transferred by V3 Infra to the investors. The “*subscriber*”/investor has the right to take possession of the said property described in the schedule only if the company fails to refund the subscription money. This clearly indicates that the property described in the schedule of the agreement deed only stands as a collateral to the subscription amount collected from the investor.

Clause 1 of “*Terms and Conditions*” of the “*Agreement Deed*” states that the buyer or the investor can obtain a flat/plot against the subscription amount in any of the lay out provided by the company at the end of the term period and the cost of the property will be decided by the company. It was however, stated that the company reserves the right to refuse any applications for purchase of the flat/plot without assigning any reasons and the company has the prerogative to refund the money collected from the investors as “*property*

advance " at any time before the end of the scheme period. It is therefore, clear that V3 Infra is collecting funds from the '*subscriber(s)*'/investors for its scheme and the contributions/funds collected from the '*subscriber(s)*'/ investors are pooled and utilized for the purpose of the '*scheme*'. In view of the aforesaid, the instant '*scheme*' satisfies the first condition of "*pooling of contribution or payments*", stipulated in Section 11AA(2)(i) of the SEBI Act.

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

It is noted from the "Schedule" to the "Agreement Deed" entered into by V3 Infra with one "*subscriber*"/investor that an amount of ₹20,000/- has been collected from the '*subscriber*'/investor and against this subscription amount, V3 Infra has offered to return ₹40,000/-, as "*Value of the property offered by the Company*"/profit/return after two years. Hence, it is clear that the second condition, which stipulates that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

- 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.***

Following clauses in the "Agreement Deed" entered into by V3 Infra with one "*subscriber*"/investor indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed solely by V3 Infra, 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,

- a. *"The company reserves the right to alter or amend any or all the terms and conditions without assigning any reasons and without any notice,*
- b. *The buyer can obtain a Flat/Plot against the subscription in any of the layout provided by the company at the end of payment period the cost of the property will be decided as per the selection of the Flat/Plot*

the actual size and location. If there is any price variation, the deference will be levied/refunded as the case may be,

- c. The company reserves right to refuse any applications for purchase of plot/flat under these schemes without assigning any reasons,*
- d. The company also reserves the right to refund the property advance any time before the end of the scheme period,*
- e. The company's interpretation of the terms and conditions shall be final".*

In these facts and circumstance, it is clear that the *subscriber(s)/investors* do not have day-to-day control over the management and operation of the '*Scheme*' and that the contribution or investment is managed and utilized solely by V3 Infra on behalf of the "*subscriber*"/investor. In view of the above, I find that the instant *Scheme*' satisfies the third and fourth conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

7. It is noted 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.*"
8. In view of the aforementioned observations of the Hon'ble Supreme Court of India in the *PGFL Case*, and in view of the abovementioned analysis and examination, it is apparent that the activity of fund mobilization by V3 Infra under the scheme "*own your property*" with a resultant promise of profit/return / "*Value of Property offered*" at the end of the "*scheme period*", *prima facie* satisfies all four conditions of section 11AA(2) of the SEBI Act as discussed in the preceding paragraphs. Therefore, I find that the activity of fund mobilization by V3 Infra with a resultant promise of returns clearly falls within the ambit of '*collective investment schemes*' as defined in Section 11AA of the SEBI Act.

9. It is noted from the “*Agreement Deed*” that the public has been made to believe that the subscription money would be utilized for real estate development by deliberately making references to Flat/land/House property in the “*Agreement Deed*”, “*Schedule*”, *etc.*. However, the terms and conditions of the said “*Agreement Deed*” specifically state that the company reserves the right to refuse any application for the purchase of flat/property under these schemes without assigning any reasons. As discussed in the preceding paragraphs, the *Subscriber*/investor has been assured a rate of return equivalent to 200% of the subscription amount in a span of two years period by V3 Infra, by making such property as collateral to the investment and also by attaching a copy of the proposed layout plan to the “*Agreement Deed*”. It is therefore, clear that aforesaid fund mobilizing activity of V3 Infra, promising returns/profit, has been camouflaged by it by way of a real estate business *i.e* “*Own your property*” only to mislead and attract investment from the general public.
10. 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.
11. In the instant case, upon a consideration of the aforementioned paragraphs, I am of the view that V3 Infra is *prima facie* engaged in fund mobilizing activity from the public, by floating or sponsoring or launching ‘*collective investment scheme*’ as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In view of this, V3 Infra and its Directors, *viz.* Mr.Virupapur Santosh Kumar; Mr.Virupapurram Madhusudhan and Ms. Hindupuram Sireesha who are in charge and responsible for the

day to day business of the company have contravened provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

12. 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 also 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 V3 Infra in respect of the aforesaid activities in the nature of '*collective investment scheme*', I am of the view that the fund mobilizing activity of V3 Infra and its Directors through the scheme, "*own your property*" *prima-facie* amounts to a fraudulent practice in terms of the aforesaid Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003, which reads as follows:

"Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include 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".

13. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that V3 Infra and its directors/promoters do not collect any further funds under its schemes and to safeguard the assets/property acquired by V3 Infra and its promoters/directors from the funds of the investing public until full facts and materials are brought about and a 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 V3 Infra and its directors.

14. 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 V3 Infrastructure & Estates Private Ltd (CIN:U45202KA2009PTC051123) and its Directors, *viz.* Mr.Virupapur Santosh Kumar (DIN:02424867); Mr.Virupapurram Madhusudhan (DIN: 02666865) and Ms. Hindupuram Sireesha (DIN: 02424858),

a. not to collect any fresh money from investors from its existing scheme;

- b. not to launch any new scheme/plan or float any new companies 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 V3 Infrastructure out of the amounts collected from the "customers"/investors under its existing schemes;*
- f. to furnish all the information sought by SEBI, vide letters dated February 13, 2014 and March 06, 2014 including,*
 - i. Copies of all the documents pertaining to the scheme, issued to the investors including the document/agreement executed with the investors,*
 - ii. Scheme -wise list of investors as on date and their contact numbers and addresses,*
 - iii. Details of amount mobilized till date,*
 - iv. Details of amount refunded till date along with the details of mode of payment, duly certified by a CA,*
 - v. Details of assets held by V3 Infra and its group companies,*
 - vi. Full details of the Group/Associate Companies of V3 Infra including full inventory of their assets,*
 - vii. Copies of the registration documents/sale deed in respect of all the land/properties owned/purchased by V3 Infra,*
 - viii. Financial statements for the last three years duly certified by the statutory auditor,*
 - ix. Income Tax returns for FY 2012-13, 2013-14, and 2014-15;*
 - x. Details of fund transfers within group companies and associates and its directors for the year 2012-2013, 2013-2014 and 2014-2015,*
 - xi. PAN of the company and its directors.*

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

16. This Order shall also be treated as a show cause notice. V3 Infra and its abovementioned Promoters/Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and for refunding the investors, any money/assets collected from them under the scheme along with the requisite interest and for winding up

of such plans/schemes in terms of Regulations 65 and 73 of the CIS Regulations, should not be issued against them.

17. M/s V3 Infrastructure & Estates Private Ltd and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, file its 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: June 23, 2015

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