

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999

In the matter of RDPL Infrastructure Limited

In respect of:

1. RDPL Infrastructure Limited,
2. Mr. Parveen Kumar Rohilla [PAN: AIUPR8350C],
3. Mr. Lalit Kumar [PAN: AUUPK3066A] and
4. Mr. Rakesh Kumar [PAN: AWPPK9383F].

Date of Hearing: March 10, 2015 and April 07, 2015

Appearance: Mr. Praveen Kumar Rohilla, Director,
Mr. Rajeev Kumar Singh, Chartered Accountant.

For SEBI: Mr. Mohammad Atif Alvi, Deputy General Manager,
Mr. Pradeep Kumar, Assistant General Manager,
Ms. Pooja Singh, Assistant General Manager.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of a complaint came to know that a company, RDPL Infrastructure Limited (hereinafter referred to as 'RDPL'/ 'the Company') is collecting money from the public. SEBI vide its letter dated October 23, 2013, advised RDPL to submit certain details/ documents including its Memorandum and Articles of Association, details of the promoters and past and present directors, balance sheets and profit and loss accounts, annual returns, brochures pertaining to the schemes/ projects, application forms, sample copies of the certificates and agreements, number of investors and the amount collected in each such plan/ scheme, number of plans/ schemes launched/ proposed, structure and terms and conditions of each such plan/ scheme, etc. Vide

another letter dated October 28, 2013, SEBI again asked the said details from RDPL. However, these letters returned undelivered.

2. SEBI vide its letters dated November 28, 2013, also asked the directors of the Company namely Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar to submit the information as asked from the Company. These letters were delivered at the addresses available with SEBI. Thereafter, SEBI also issued letter dated December 09, 2013, to the corporate office address of the Company, asking for the similar information.
3. One Mr. Rajeev Kumar Singh, Chartered Accountant while writing on behalf of the Company, vide his letter dated December 14, 2013, requested for an extension of time for submitting the information as was asked by SEBI. Vide another letter dated January 20, 2014, the documents such as Memorandum and Articles of Association, list of directors, copy of brochure, application form, registration letter, list of investors and amount collected from its investors, balance sheets and profit and loss account since incorporation (except the financial year 2012-13), copy of audit report since incorporation and copy of an affidavit from the directors giving consent to refund any outstanding amount of the investors were submitted. Vide another letter dated January 31, 2014, the balance sheet and profit and loss account of the Company and copy of the audit report of the Company both for the year ended 2013 were submitted.
4. In the meantime, SEBI vide its letter dated October 25, 2013, also sought certain details from the Registrar of Companies (hereinafter referred to as 'RoC'), Delhi and Haryana, which were provided vide letter dated January 09, 2014.
5. On consideration of the documents available on record, SEBI *prima facie* found that the scheme/ arrangement of RDPL are in the nature of CIS. Thereafter, a show cause notice (hereinafter referred to as 'SCN') dated May 12, 2014, was issued to RDPL and its directors namely Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar (hereinafter collectively referred to as 'noticees') advising them to show cause as to why appropriate directions under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with

the Regulation 65 of the CIS Regulations, should not be issued against them for the alleged violations. The SCN indicated that the noticees may send their replies within 21 days from the receipt of the SCN failing which it shall be presumed that noticees do not have any explanation to offer and that the proceedings will be concluded *ex parte* on the basis of the material available on record.

6. On behalf of the Company, the Chartered Accountant namely Rajeev Singh vide his letter dated May 30, 2014, requested for an extension of time for submission of the reply to the SCN and vide another letter dated June 20, 2014, forwarded the reply of the Company (dated June 20, 2014) and requested for an opportunity of personal hearing. On analyzing the reply of the Company, SEBI vide its letter dated November 24, 2014, sought certain additional information/ clarification i.e. complete copies of the application form cum agreement as executed with ten different customers, sale deeds executed in favour of five customers, details of the repayments made by the Company to its customers (including name, address, date of application/ investment, amount mobilized, amount repaid and date of repayment), a certificate from the auditor verifying and confirming the repayment along with the bank account details of the Company after analysing the replies of the Company.
7. As no reply was forthcoming, SEBI vide its letter dated December 09, 2014, issued a reminder letter to the Company to submit the details. On behalf of the Company, Mr. Rajeev Singh, Chartered Accountant vide his letter dated December 12, 2014, requested for an extension of time for replying to the queries as asked by SEBI and later submitted the letter of the Company providing (the copies of 10 filled in application form cum agreements along with proof of refund made to these 10 investors and details of the bank accounts of RDPL) and sought for an opportunity of personal hearing vide letters dated December 24, 2014 and January 21, 2015. As regards the certificate of auditors against the repayment of the advances by the Company, the Chartered Accountant requested for an extension of time for submitting the same.
8. I note that the directors of the RDPL have not filed any separate reply to the SCN inspite of delivery of the SCN. Before proceeding further, RDPL was afforded an

opportunity of personal hearing on March 10, 2015. On the date fixed for personal hearing, Rajeev Singh, Chartered Accountant appeared as the authorised representative of the Company and requested for an adjournment on the ground that the directors of the Company are out of station. The request for adjournment was considered and the matter was adjourned to April 07, 2015. On April 07, 2015, the noticee namely Mr. Praveen Kumar Rohilla appeared along with Mr. Rajeev Singh, Chartered Accountant and made oral submissions. On this date, Mr. Rajeev Singh also filed the authorization letter (dated April 06, 2015) from the directors of the Company. During the course of personal hearing, the representatives were asked to provide the details/ documents including bank details to show how the funds were collected and the source thereof and details to show how the funds were repaid to the customers mentioning the name of the customers along with the addresses, maturity amount promised, date of repayments, mode of repayments along with cheque number, cheque date and bank name from where the cheque of repayment was issued. The representatives were also asked to provide the bank statement of all its bank accounts since the date of launching of the schemes. For submitting these details, the noticees were granted twenty days' time. Later, SEBI also issued a letter to the Company dated April 13, 2015, while, writing the details as asked during the course of personal hearing. The authorized representative vide his emails dated April 27, 2015 and May 20, 2015, sought an extension of time for submitting the details as asked for, on the ground that the details are under preparation and that he was out of station. I note that the Company through the Chartered Accountant, vide letter dated June 11, 2015, submitted the repayment details for its customers containing the names of the investors, their addresses, instrument value, mode and date of payment and repayment and the copies of the bank statements on behalf of the Company.

9. The submissions of RDPL in brief, are as under:
 - a. The Company had undertaken a genuine real estate activity since the year 2009.
 - b. RDPL had made the initial investment by procuring the land and developing the same after approval from the concerned authorities. Thereafter, RDPL allotted the land to the prospective buyers/ customers. For the same, the Company entered into an

agreement for specified sale of 'specified area of developed plot of land' and subsequently the said plot were transferred in the name of the customer by way of registered sale deed/ lease deed or sub lease deed, as the case may be. The customer becomes an absolute owner of the plot on registration of the sale deed/ lease deed in his favor. The Company has to deliver the plots to its allottees after the completion of the project.

- c. The development of projects by the Company are undertaken by selecting the location of the land, legal due diligence, purchase/ collaboration of the land from the land owners, applying for license of the project before the respective states (if any), completion and occupation certificate from the concerned authority, offer of possession, execution of sale deed and conveyance deed with the customer.
- d. There is no contribution made by the purchaser. The payment made by the purchaser is the advances against the property purchased and the same is only for the purchase of land and development of the plot. The customer has no right on other assets of the Company. The payment received from the investors had not been used to run the business of the Company but for the development of land. The payment by the purchasers are the advances against the property and the same cannot be termed as 'deposit' as defined in the Reserve Bank of India Act, 1934 and the Companies (Acceptance of Deposits) Rule, 1975.
- e. The purchasers of the plot go through the project, plan and specifications about the project including the time of completion of the project and on being satisfied in all respect, the purchaser decides to purchase the property. The customer is provided with the site/ location details, verification of land document. Thereafter, the customer submits the application form and on execution of 'application cum agreement form' sale/ conveyance/ lease deed is executed. The purchaser has all the right to check, whether the development of the project has taken place as per the plan or not.
- f. It does not offer commitment amount to all prospective buyers. Only in cases of persons who have opted not to take the developed plot or who have failed to pay the installment amount, the commitment amount is offered.

- g. There is no lock in period for the investment. After delivery of the possession on registration of sale deed/ lease deed, the purchaser is free to deal with the plot. There is no option of buy back in the project.
 - h. As the Company had incurred huge losses, its directors have decided to refund all the prospective buyers, subject to the buyers providing the application form with identity card for authentication. It has not received any complaint from its prospective buyers and is in the process of repaying the amounts.
10. I have considered the SCN, the reply, the oral and written submissions of the noticees, the documents furnished by RDPL and the material available on record. As per the details available on record, the Company had mobilized ₹2,73,37,484 from 704 investors. While proceeding further, I note that the main allegation leveled against RDPL is that the plans/ schemes operated by it are in the nature of CIS and RDPL was offering these schemes without obtaining registration from SEBI in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. The directors of RDPL have also been alleged to be responsible for the conduct of the business of RDPL. The issue that now arise for my consideration is: whether RDPL is operating a CIS without obtaining registration from SEBI?
11. **Whether RDPL is operating a CIS without obtaining registration from SEBI?**
- a. RDPL in its reply to the SCN has argued that it is involved in the sale and purchase of the plot. In this regard, it is necessary that the documents submitted by RDPL along with the submissions be considered first: As per the Memorandum of Association and Articles of Association of RDPL the main objects of the Company, *inter alia*, are to:
 - “...
 - 1. To carry on the business of promoters, builders, colonizers, ..., real estate agents and consultants ...
 - ...
 - 4. To purchases and sale land for the construction of multi storeyed building apartments and to licence flats there in on suitable terms and conditions.
 - 5. To carry on the business as commission agents for all kind of lands, immovable properties and buildings”

- b. I note that the Company has not provided any independent document to represent its scheme of sale of plot of lands except a reference about these in its reply dated June 20, 2014, under the heading 'Projects of RDPL Infrastructure Limited'. The same is being reproduced as under:

TABLE - A

S. No.	Projects	Payment Plan		Any Commitment amount offered
		Down Payment Plan	Installment Payment Plan	
1.	150 sq. yds.	Yes	Yes	Yes, but subject to as per clause 3(a) and 3(b) in 'Application cum Agreement Form'
2.	200 sq. yds.	Yes	Yes	Yes, but subject to as per clause 3(a) and 3(b) in 'Application cum Agreement Form'

From the above, it is seen that the Company had two projects i.e. 150 sq. yds and 200 sq. yds. RDPL has provided two payment options to its customers i.e. down payment plan and installment payment plan and in both the plans it offers returns.

- c. It is also seen that the Company has not provided any copy of the 'application cum agreement form'. The document provided is a 'Registration Letter Own Your Plot Scheme Agreement Bond'. The sample 'Registration Letter Own Your Plot Scheme Agreement Bond' mentions as under:

"In response to your application, we are pleased to inform you that you have been registered for the PLOT(S) booked by you as per details furnished hereunder. The terms of booking and allotment shall be governed by the terms of Agreement and General Terms and Conditions printed overleaf.

The same contains the details such as the name and address of the customer, serial number, registration number and date of commencement, payment plan number and terms, consideration, plot size, mode of payment, periodicity of installment, expiry date of agreement, nominee details, resale/ realizable value at the end of the term, etc. I have perused the terms and conditions provided on the reverse side of the 'Registration Letter Own Your Plot Scheme Agreement Bond'. The relevant clauses of the same are as under:

- "1. The applicant shall make full payment as per the existing payment plans.
2. The land shall be allotted in the name of the customer, in the case of cash down payment Plan, after receipt of full payment within a reasonable period generally not exceeding 270 days and in case of instalment payment plan, within a reasonable period, generally not*

exceeding 90 days after the receipt of 50% of the total amount of instalments. Subject to the foregoing, land ownership shall be transferred to the customer within a reasonable period after allotment.

3. *In case of Instalment payment plan(s), if the customer makes a default by not paying one or more instalments(s) for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement.*

... ..

6. *The Customer shall be the owner-in-possession of the said property. The possession of the said property shall rest in the hands of RDPL for the limited purpose of developing and/ or wherever considered appropriate by RDPL for cultivating, raising crops, trees, plants, saplings, etc., harvesting, and for carrying out all such activities as are allied and ancillary thereto. RDPL shall have rights whatsoever over the said property as a manager/ tenant nor shall RDPL be deemed to be a manager/ tenant.*

7. *Cost of the said property includes, the cost of land, development charges, other inputs, saplings, plants, trees, crops, planting expenses, maintenance and other miscellaneous expenses.*

8. *The customer has the right to retain or sell the said property as he/ she may deem fit, on expiry of the tenure of this Agreement. To facilitate easy liquidity, RDPL provides to customer(s) the marketing services for sale of developed plots. In case Customer decides to avail RDPL's aforesaid services, he/ she must notify RDPL to that effect atleast 180 days before expiry of the period of agreement. The sale can be made only at the end of the tenure of this agreement at such price which may be mutually agreed between the parties.*

In opinion of the Company, based on current market situation and related factors developed plot of land of 150 sq.yds. or 200 sq.yds, upon completion of the development period and owing to value addition, may fetch an estimated price as per detailed given below, depending upon the development period (as per table).

The estimated value mentioned against each development period is the composite value of land, plants, trees etc. and structures thereon.

9. *RDPL shall have first charge on said property on account of its unpaid instalments for services/ development charges and for other incidental expenses incurred by RDPL. The said property cannot, in any other manner be sold, assigned mortgaged, pledged or alienated without obtaining NO DUES CERTIFICATE, from the company in case of instalment payment plans.*

10. *The management of Company reserves the right to discontinue/ change/ amend/ modify or alter prospectively any of the rules/ regulations and payment plans and introduce new payment plans at any time as its sole discretion with or without any notice.*

11. *In case of joint sale deeds, the title deeds pertaining to the sale of the said property shall be kept in the safe custody of Trustee(s) appointed by RDPL for the purpose. A certified copy of the said title deed, issued by the sub-registrar or by a public notary, as may be feasible or practicable, shall be made available to the customers by the said Trustee(s). The name and address of the Trustee(s) shall be informed to the customer by the letter of allotment. The customer shall have the liberty to verify the title deed at the office of Trustee(s) during the normal working hours on any working day, after furnishing a formal written request therefor 15 days in advance.*

... ”

It is noted that the Company had two plans i.e. 'cash down payment plan' and 'installment payment plan'. It is also noted that the document mentions about the 'letter of allotment', however the Company has not furnished any copy of the same.

- d. Another document is 'Request for refund of advance for land' which reads as under:

“Application

Subject: Request for Refund of Advance for land

Sir,

This is to request you to kindly refund the advance paid by my ward Rs. ... for the purchase of cents/ acres/ sq.yds. of agriculture land and for development and maintenance of the same, as I do not wish to purchase the land now.

Kindly refund the said amount as per the terms of the agreement between you and my ward in that regard.

...”

It is noted that the same is on the letter head of the Company and refers to the terms of the agreement. The same do not support the submissions of the Company that the payment of the customer was advance against the property purchased and the same is only for the purchase of the land and the development thereof.

- e. The last document is the 'receipt' from the customers of the Company as against the repayments made. The same reads as under:

“Received a sum of Rs. ... in cash from RDPL Infrastructure Limited ... as refund of advance paid by me for the purchase of Agriculture land and for development and maintenance of the same, in full and final settlement against initial deposit of Rs. ..., made with Company.

I do here by relinquish my all right in the above stated plot allotted to me thereon as per the terms of the agreement in that regard between RDPL ... and my ward.”

It is noted that the documents refers to the plot of land, however, it do not give any details of the plot.

- f. From the discussion above, it is observed that the Company was inviting applications for selling plot(s) wherein it provided the 'estimated realisable value at the end of the term'. I also note the following:

- i. The Company has not provided the allotment letter though the same find specific mention in the 'Registration Letter Own Your Plot Scheme Agreement Bond'.

- ii. The Company does not provide the plot details in the registration letter though the same provides the estimated realisable value at the end of the term. No details have been submitted by the Company to show how it provided the location details of the plot to the customer.
- iii. The possession of the plot always remains in the hands of RDPL. No sale deed showing the transfer of land in favour of the customer has been produced by the Company.
- iv. The right to discontinue/ change/ amend/ modify any rules/ regulations are reserved by the management of the Company.
- v. The Company has provisions for joint sale deed.
- vi. From the sample of executed documents as submitted by RDPL vide its letter dated December 24, 2014, it is noted that the Company had taken consideration for plot sizes in the range of 25-100 sq. yds. only, which does not match with the area offered in the projects of the Company, as mentioned in its reply to the SCN.

From the observations as noted above, it can be inferred that the transactions of the Company were not in the nature of real estate transactions. Rather, it can be said to be an investment scheme.

- g. The Company in its submissions has claimed that it is in the process of repaying to its investors and vide its letter dated June 11, 2015, it has submitted the repayment details. I have seen the repayment details and also compared the same vis-à-vis the complete set of customers document (on sample basis) as submitted by the Company vide its letter dated December 24, 2014. My observation on these are as under:

- No land was allotted to such customers. The Company has only returned the amounts of the customers with returns.
- The Company has submitted sample documents for 'request for refund of advance for land' and 'receipt' for the same. It is curious to note that the documents are photocopies of original documents that bore the signatures of the applicants, with the amount columns left blank. In the document submitted to SEBI, the amounts have been filled in ink. This casts serious doubts about the authenticity of such documents.

- The receipts does not contain the dates, which makes it difficult to reconcile the same with the repayment details as submitted.
- There is mismatch between the repayment details of customers as submitted earlier to SEBI vide letter dated December 24, 2014 and those submitted vide letter dated June 11, 2015. A sample analysis of the same is as under:

TABLE - B

S.No.	Name	Amount repaid as per letter dated December 24, 2014 (₹)	Amount repaid as per letter dated June 11, 2015 (₹)
1.	Meghnakar Baudh	21,999	19,800
2.	Sanjay Yadav	41,999	17,000
3.	Minakshi	41,999	-
4.	Santosh Devi	41,999	- (instrument value appearing as ₹21,000)
5.	Sangeeta	21,999	86,000
6.	Meghraj Singh*	1,18,998	2,51,268
7.	Hanuman Singh*	1,05,998	11,54,740
8.	Adesh Kumar	21,999	43,998
9.	Gurwinder Kaur	83,999	-

* These customers/ investors had made investment in more than one tranche with the Company.

- It is also noted from the documents submitted by the Company that the signatures on the receipts of the customers namely Ms. Minakshi (for ₹41,999) and Mr. Sanjay Yadav (for ₹41,999) appear to be the same. Other details in the receipt i.e. name, plot registration number, father/ husband name, address and date are blank.
- As per the repayment details submitted by the representative of the Company vide its letter dated June 11, 2015, the amount due to the customer namely Ms. Minakshi is ₹21,000 and the same is shown as unpaid. As regards, the customer namely Mr. Sanjay Yadav, it is seen from the repayment details submitted by the Company vide letter dated June 11, 2015, that he has been repaid only ₹17,000 in cash when the instrument value was shown as ₹21,000.
- The registration letter of Mr. Sanjay Yadav states the commencement date of the 'Registration Letter Own Your Plot Scheme Agreement Bond' as 'August 01, 2010' and expiry date as 'July 31, 2013'. It is noted that he had opted for 'one time payment plan' of the Company and paid ₹21,000 for 50 sq. yds plot. The application for the refund for this customer had been made on September 18, 2014 i.e. after the date of expiry. The 'request for refund of advance for land' shows that the customer had asked for a refund of ₹41,999. This sum is the 'realisable value

at the end of the term' as printed on abovementioned 'Registration Letter Own Your Plot Scheme Agreement Bond'.

- No document has been produced to show that the land was allotted to this customer. Therefore, it has to be inferred that the Company did not allot any land to this customer.
- In case the Company was in genuine real estate business, it would have allotted the land in the name of the customer as Mr. Sanjay Yadav had paid the full consideration on August 01, 2010, itself. There was no reason for not allotting the land to the said customer. Further, it is noted that the 'receipt' issued to the customer states that he is relinquishing the right in the plot allotted to him as per the terms of the agreement with RDPL. This statement is only misleading as no plot/ land was allotted in the first place to the customer.
- It is noted that the majority of the repayment had been done by the Company in cash. Out of the total amount claimed to be repaid i.e. ₹2,17,63,695, ₹1,72,11,807 has been paid in cash and only ₹45,52,888 has been paid by cheque.
- The submissions of RDPL that it has repaid majority of its investors is contradictory to facts available on record.

h. As per the financial statements of RDPL for the financial year ending March 31, 2012 and March 31, 2013, it has been observed that the balance of current liabilities and provisions which includes advance from customers has been decreasing on year-on-year basis and balance of long term liabilities have been increasing on year-on-year basis, as detailed in the table below:

TABLE - C

Balance Sheet Item	As on 31/03/2010 (₹)(Cr.)	As on 31/03/2011 (₹)(Cr.)	As on March 31/03/2012 (₹)(Cr.)	As on 31/03/2013 (₹)(Cr.)
Current Liabilities and Provisions	1.73	3.07	3.38	0.87
Advance from Investors	1.69	2.74	2.74	0
Long term Liabilities	0	0	2.74*	2.154

It is observed that the details of advance from customers amounting to ₹2.74 crore as on March 31, 2012, is not appearing in the financial statements for March 31, 2013. RDPL has failed to provide any comments on the same in spite of specifically asking about it by SEBI vide letter dated November 24, 2013. The continuous decrease in

current liabilities coupled with the increase in long term liabilities indicates the possibility that RDPL is renegotiating the terms of repayment with its customers.

- i. An analysis of the bank statement of the Company revealed bulk cash deposits and subsequent withdrawals of varying amount through cheque/ cash during the calendar year 2009 and 2010. Post the calendar year 2010, not much activity is observed in the bank accounts of the Company.
- j. Having considered the above, now I proceed to deal with the charges leveled against the Company. The main allegation leveled against the Company is that it is operating CIS without obtaining registration from SEBI. As per the CIS Regulations, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI. It is now necessary to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act as alleged in the SCN. I note that in order to conclude whether a scheme is a CIS or not, all the four conditions under section 11AA(2) of the SEBI Act should be satisfied.
- k. Let me now, proceed to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act.
 - i. The first condition is that *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement*. RDPL admittedly takes the payments from the customers in the form of advance against the property by offering a scheme. A perusal of the 'Registration Letter Own Your Plot Scheme Agreement Bond' shows that no specific plot is mentioned at the time of entering into the agreement (i.e. the plot is not identified). Company has not submitted any document to show that it allots/ intimates the specific location of the land/ plot to its customers.

The Company in its submissions has submitted that it had made the initial investment by procuring the land and it develops the same after approval from the concerned authorities. However, the Company has not submitted any sale deed to show that it was having land in its possession or any other document to show that it took any approvals from the relevant authorities. Instead, it is seen that RDPL allots the land to the customers in the case of 'cash down payment plan' in about 270 days after the receipt of full payment and in case of 'instalment payment plan', the land is allotted to the customers within 90 days after the receipt of 50% of the total amount of instalments. RDPL has not given any plausible reason for having the waiting period for 270 days for allotting land to its customers when it was already in possession of the land. The same leads one to infer that the land is being purchased subsequently by the Company i.e. after taking the money from the customers. These facts suggests that the investments of the customers were being pooled and utilized for the plans/ schemes offered by it i.e. procuring the land/ plot, developing the same, etc. In view of the above, the first condition that 'contribution or payments made by the investors, by whatever name called, are pooled and utilized by RDPL for the purposes of the scheme / arrangement, as stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. The second condition is 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, whether movable or immovable from such scheme or arrangement*. A perusal of the 'Registration Letter Own Your Plot Scheme Agreement Bond' issued by the Company reveals that RDPL gave 'realizable value at the end of the term'. This makes it clear that the customer makes contribution/ payment with a view to receive the profits/ income/ property/ return on their initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.
- iii. The third condition is that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors*. The fourth condition is that *the investors do not have day to day control over the management and operation*

of the scheme or arrangement. As per the terms and conditions on the reverse side of 'Registration Letter Own Your Plot Scheme Agreement Bond', the possession of the said property shall rest in the hands of RDPL. I also note that RDPL retains the possession of the land with itself as per the terms of the 'Registration Letter Own Your Plot Scheme Agreement Bond' for the development/ cultivation/ raising crops etc. From the same, it can be said that the customer does not manage his investments in the scheme rather his investments are managed and utilized by the Company at its discretion and the customer does not have day to day control over the plot of land/ property as the same remained in the custody/ use of RDPL.

Further, the customer is never made aware of the location of the plot. The above discussion shows that the property, contribution and investment pertaining to the plan/ scheme are managed by the Company. In view of the same, the customer does not have any day to day control over the management and operation on the land.

1. As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in the instant case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1). In this regard, I place my reliance on the observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"42. ...

... .. as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. 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.

... ..

53. ... *therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of ... the sale and development of agricultural land squarely falls within*

the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act ...”

- m. The entity needs to be registered with SEBI in order to run the CIS activities. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. RDPL has clearly failed to do so. Regulation 3 of the 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'. 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. I note that RDPL has launched a CIS without obtaining certificate of registration from SEBI, it has contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.
12. The SCN has been issued to the Company and its directors namely Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar. These persons are continuing as directors of the Company and are responsible for carrying on the unregistered CIS activities. Therefore, I have no hesitation in holding that RDPL and its directors were engaged in the fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act.
13. I have also examined the financial statement of RDPL as submitted by the Chartered Accountant on behalf of the Company vide his letter dated January 20, 2014. The relevant part of the same is being reproduced below for reference:

**Advance from investors
(Schedule “F” ‘Current Liabilities & Provisions’)**

Particulars	2009-10 (₹)	2010-11 (₹)	2011-12 (₹)
Advance from investors	1,69,28,800	2,74,42,484	2,73,87,289

Fixed Assets	1,55,470	1,55,470	1,55,470
Commission Expenses	28,21,191	37,99,845	1,25,470

From the above, it is observed that the fixed assets owned by RDPL are far less than its liabilities to be paid off. Further, as per the submissions of RDPL, the installment payment plan had been withdrawn w.e.f October 31, 2011 and the amount was being refunded back to the customers. However, it is noted that the amount of 'advance from investor' had reduced only by ₹55,195.

14. With the above observations, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11B thereof and Regulation 65 of the SEBI (Collective Investment Scheme) Regulation, 1999, hereby issue the following directions, in the interest of investors:
 - a. **RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla [PAN: AIUPR8350C], Mr. Lalit Kumar [PAN: AUUPK3066A] and Mr. Rakesh Kumar [PAN: AWPPK9383F]** shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
 - b. RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market and launching any scheme for mobilization of funds in any manner for a period of four (4) years.
 - c. RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be

refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

- d. RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar shall not alienate or dispose off or sell any of the assets of RDPL Infrastructure Limited except for the purpose of making refunds to its investors as directed above.
 - e. RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
 - f. In the **event of failure** by RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar **to comply with the above directions**, the following actions shall follow:
 - RDPL Infrastructure Limited and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four years of restraint imposed in **paragraph 14(b)** above, till all the Collective Investment Schemes of RDPL Infrastructure Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against RDPL Infrastructure Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, RDPL Infrastructure Limited.
 - SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.
15. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against RDPL Infrastructure Limited

and its directors viz., Mr. Praveen Kumar Rohilla, Mr. Lalit Kumar and Mr. Rakesh Kumar, including other persons who are in default, for the violations as found in this Order.

16. This order shall come into force with immediate effect.
17. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE : September 22nd, 2015
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA