

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, 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 DGR Farms and Leisures Limited

In respect of:

Sr. No.	Noticee(s)	PAN Details
1.	DGR Farms and Leisures Limited	AADCD2895N
2.	Mr. Rakesh Kumar Gupta	AIXPG8273A
3.	Mr. Umesh Soni	BTKPS1732H
4.	Ms. Nivedita Gupta	AHLPG5454E
5.	Mr. Umesh Gupta	AHAPG4380N
6.	Mr. Alok Kumar Singh	AWJPS1018D
7.	Mr. Jainendra Kumar Patel	AKOPP8093N
8.	Mr. Sanjay Kumar Gupta	AIZPG2134Q
9.	Mr. Shankar Lal Gupta	AGMPG4657M
10.	Mr. Vijay Kumar Shukla	BLHPS3014H
11.	Mr. Jitendra Kumar Tripathi	ADIPT4968P
12.	Mr. Sushil Kumar Dubey	AFAPD7831F
13.	Mr. Jitendra Kumar Patel	NA

The aforesaid entities are hereinafter referred to individually by their respective names/Noticee number and collectively as “the Noticees”.

BACKGROUND:

1. M/s DGR Farms and Leisures Ltd. (hereinafter referred to as '**DGR**'/ '**the Company**') was incorporated on October 27, 2009 as a private limited company which was subsequently changed into a public limited company on January 18, 2011. The registered office of the Company is in Bhopal, Madhya Pradesh. The authorized share capital and paid up share capital of the Company, as per the website of Ministry of Corporate Affairs (hereinafter referred to as '**MCA**'), are Rs. 2,00,00,000/- and Rs. 61,44,000/-, respectively. As per Memorandum of Association of the Company, the main objective of the Company includes – to farm, grow, cultivate plant/ produce, carrying on business of hotels, acquire any land and develop the same and carry on the business of developing commercial / residential properties.
2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a witness summons from the Court of Judicial Magistrate First Class, Rewa, in a complaint matter namely, *Devmuni Patel vs. Umesh Gupta & Others*. On perusal of the copy of the complaint filed in the matter and the related papers, it was prima facie observed that the Company was involved in illegal mobilization of money in the guise of joint venture for booking land plots.
3. In view of the above, an examination was conducted by SEBI which revealed that the Company was operating two types of plans for the sale of land plots viz. 'one-time payment plan' and 'instalment payment plan'. The Company was also assuring specified returns in land advance scheme e.g. for an investment of Rs. 50,000/- an expected return of Rs. 1,00,000/- was promised in sixty months and expected return of Rs. 1,50,000/- was promised in hundred months. As such, it was observed that the Company was operating schemes in the nature of collective investment schemes (hereinafter referred to as '**CIS**'), as defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), without obtaining registration from SEBI which resulted into violation of Section 12(1B) of the SEBI Act, 1992, Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as '**CIS Regulations**') and Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**').

SHOW CAUSE NOTICE, REPLY AND HEARING:

4. In view of the aforesaid findings of the examination conducted by SEBI, a show cause notice dated August 29, 2018 (hereinafter referred to as, '**SCN**') was issued to the Noticees calling upon as to why the schemes of accepting advance in the name of selling land by the Company should not be declared as CIS and appropriate action including directions under Sections 11, 11(4) and 11B of the SEBI Act, 1992 read with Regulation 65 of the CIS Regulations should not be issued against them. Along with the SCN, the following documents were also annexed:
 - a. Copy of the witness summons from Court of Judicial Magistrate First Class, Rewa to SEBI.
 - b. Documents in respect of the Company details and director/signatory details obtained from the MCA21 portal.
 - c. Copy of the Letter of the Company received by SEBI on November 27, 2014, containing *inter alia* copy of Memorandum and Articles of Association, details of past and present directors, copy of advance registration forms for the various schemes, Annual Report for financial year 2010 to 2013, etc.
 - d. Copy of the Letter of the Company dated January 07, 2015, containing *inter alia* copy of certificate of scheme with general terms and conditions, copy of provisional allotment letters, list of details of applicants of various schemes, list of land advances received from applicants, brochure of projects, Annual Report for financial year 2014, Cash book and Bank book for of the Company for financial year 2010-2011 etc.
 - e. Copy of the Letter of the Company received by SEBI on January 14, 2015, containing *inter alia* copies of certificate of schemes, collection receipts, copy of Company scheme circular no. 01/2010 dated December 01, 2010, circular no. 03/2010 dated December 11, 2010, circular no. 05/2010 dated January 01, 2011, circular no. 08/2011 dated March 01, 2010, circular no. 10/2011 dated March 16, 2011, circular no. 13/2011 dated April 10, 2011, circular no. 17/2011 dated June 01, 2011, circular no. 20/2011 dated July 15, 2011, circular no.

36/2012-13 dated May 01, 2012, circular no. 42/2012 dated August 18, 2012, circular no. 56/2013 dated August 29, 2013, etc.

- f. Copy of the Letter of the Company received by SEBI on April 28, 2015, containing *inter alia* list of preference shareholders in the Company, declaration letter, etc.
5. The Noticees were also advised to file their reply within a period of 21 days from the date of receipt of SCN and to indicate for availing opportunity of hearing, if so desired.
 6. The SCN was served upon the Noticees No. 1, 3, 4 and 9 to 13 through speed post. Since the speed post for Noticee No. 2 and 5 to 8 were returned undelivered and affixture could not be done, publication was undertaken in newspapers i.e. Times of India and Dainik Bhaskar, Bhopal edition, on December 04, 2018. A reply dated December 26, 2018, was received from the Company purportedly made on behalf of all the Noticees. Along with the reply, the following documents were also annexed:
 - a. List of customers whose advances are stated to have been adjusted in Unit/Plot of Project Geetanjali Vihar, Shadol in the year 2017 and 2018.
 - b. List of customers whose booking advance are stated to have been refunded in the year 2018.
 - c. Bank statement of the Company.
 - d. Sample Agreement of allotment of Unit/Residence or Plot.
 7. In compliance with the principles of natural justice, an opportunity of personal hearing was provided for which the matter was fixed for hearing on February 15, 2019 and communication was made to the Company, which had replied on behalf of all the Noticees, stating that all the Noticees have been given an opportunity of hearing before the competent authority. However, none of the Noticees turned up for availing the opportunity of hearing and also did not make any request for further date of hearing.
 8. Accordingly, the matter is being proceeded with on the basis of material available on record. As mentioned above, the Company vide its reply dated December 26, 2018, denied all the allegations levelled in the SCN. The main contentions raised and submissions made by the Company are summarised as under:

- a. That if the purported reasoning adopted by SEBI were to be adopted, every business entity which engages in any activity involving payment by installments for provisions of any project or its parts, would be a collective investment scheme, requiring registration with SEBI which is contrary to the legislative intent behind the introduction of Section 12(1B) of the SEBI Act, 1992 read with Regulation 3 of CIS Regulations. The property development business of the Company does not in any way conform to the class of business which fall within the parameters of the said Regulations.
- b. That the Dave Committee Report, Press Release dated November 18, 1997 and Statement of Objects and Reasons of the Securities Laws (Amendment) Act, 1999, shows that the CIS Regulations were enacted with a view to regulate companies engaged in plantation / agricultural activities that were raising money from the public by issuing bonds. The Noticees have further submitted that the CIS Regulations were never intended to apply to companies such as the Company which are engaged purely in real estate business and that the CIS Regulations have been erroneously applied.
- c. That unlike the concerns noted in the Dave Committee Report, the Company does not promise any exorbitant or unreasonable return and it offers an average rate of return of 12% per annum which is only marginally higher than the rate of interest on fixed deposit offered by banks and is simply compensation paid by Company for the lost time value of money in case the investors choose not to pay the balance portion of the purchase consideration required for allotment of a plot of land and opt for refund of the booking amount.
- d. That the Company is in the business of development of land, *inter alia*, through construction of commercial and residential properties and division of land into plots for sale. The funds raised from the prospective purchasers under these schemes are merged with the other real estate projects unconnected with the land development projects and are indistinguishable in the manner of their utilization and the same is also used for the ongoing corporate expenses and other business activities of development of residential and commercial activities unconnected with the land purchase schemes. The Company has further submitted that once the part payment is

received from the purchasers under the schemes, the obligation of Company is to repay the amount collected with interest or to deliver possession of the land upon receipt of the balance consideration arises only upon maturity and that, until then, there is no restrictions on the Company on the manner of utilization of these funds.

- e. That its schemes are only aimed at making it easier and convenient for purchasers to pay for the plots of land booked by them in easy installments. These purchasers are also often affected by economic difficulties and in such cases they decide not to go ahead with the purchase of land and rather, they prefer for their monies to be refunded. Therefore, it is not commercially viable for the Noticee no. 1 to use the entire proceeds of the schemes for development of land and divide the land into plots for purpose of transfer to the purchasers under these schemes. The Company has also to invest part of these funds into its other projects to improve its profitability and, *inter alia*, to enable it to return the money with interest in case the purchaser exercise that option.
- f. That SEBI has failed to consider that the schemes of the Company were only aimed at providing a convenient and easy method of paying for plots of land to be sold by the Company. SEBI further failed to consider that no complaint has been received from any purchaser that the part payments made by him/her were misused by the Company or that the Company failed to refund the part payments made, when so demanded.
- g. That the scheme of the Company were not intended to provide any income or return or profit to its subscribers and in the business model of the Company, it was only incidental that some of the subscribers sought return of the part payments made by them instead of allotment of land units. Once the subscribers chose to exercise that option, the Company was bound to return such part payments with interest representing the lost time value of money, in the interests of justice and commercial equity.

CONSIDERATION OF ISSUES AND FINDINGS:

- 9. I have perused the SCN dated August 29, 2018 and the reply dated December 26, 2018 filed by the Company on behalf of itself and other Noticees along with the documents

annexed therewith. As the Noticees have denied that they were carrying out unregistered CIS activities, the question now arises as to whether the activities carried out by the Company are in the nature of CIS which could attract the violation of provisions of SEBI Act, 1992, CIS Regulations and PFUTP Regulations, 2003, as alleged in the SCN dated August 29, 2018.

10. Before proceeding further, it would be appropriate to summarise the schemes allegedly operated by the Company and the money mobilised from the investors, as detailed in SCN dated August 29, 2018 and documents annexed with the SCN and the reply of the Noticees, which are as under:

- a. The Company stated that it was operating schemes for selling undeveloped agricultural land and undertaking the development of the same at the option of the customer. As per mode of payment, there were two types of plans for sale of land plots viz. 'one-time payment plan' and 'instalment payment plan' and, as per the scheme, the land was to be allotted in the name of the customer only after receipt of full consideration. The Company, vide its various circulars that have been submitted by the Company in its letters to SEBI which have been annexed to the SCN, had specified expected returns in Land Advance Scheme for fixed period. Some examples of the schemes of the Company, as given in its various circulars, are as under:

Table 1 – D-F Scheme (for limited period from 1st Dec 2010 to 31st Dec 2010) as per Circular no. 1/2010 dated December 01, 2010

No. of Unit	Total Participation	Expected Return of Participation
0.50	7500	15000
0.67	10000	20000
1.34	20000	40000
3.33	50000	100000
6.67	100000	200000
13.34	200000	400000

Table 2 – D3 (One Time Payment Plan for below 3 Lac) as per circular no. 13/2011 dated April 10, 2011

No. of Unit	Total Participation	Expected Return of Participation
0.67	10000	14310
1.00	15000	21466
3.33	50000	71550

Table 3 – D3 (One Time Payment Plan for above 3 Lac) as per Circular no. 13/2011 dated April 10, 2011

No. of Unit	Total Participation	Expected Return of Participation
20	300000	435000
33.33	500000	725000

Table – 4 (Product Period from May 01, 2012 to July 31, 2012) as per Circular no. 36/2012-13 dated May 01, 2012

Product Type	Tenure in Month	Minimum Participation	Expected appreciated value of Land
D3-II-V	36	5,00,000	7,20,000
D3-II-X	36	10,00,000	15,50,000

- b. The Company has stated that it has a total land bank of 19.795 hectares of land spread across Fatehpur (0.23 acres), Shahdol (8.695 acres) and Siddhi (10.87 acres). The money was accepted from the customers/investors under various plans named as DR-60, DR-66, D5, D6, DR-72, D-10, DR-96, D-9 etc. and the amount collected from customers/investors ranges from Rs. 125/- to Rs. 1,00,000 /-per customers/investor against land located in Rewa, Siddhi, Fatehpur and Shahdol. However, the allotment letter does not mention the area of land allocated or the specific location of the land.
- c. The balance sheet of the Company as on March 31, 2013 shows “Advance from customers” of Rs. 1,15,66,570, against Nil in previous year. Under the heading of

current assets there are “deposits receivable” of Rs. 34,70,285 as on March 31, 2013. The “Land Advances” of the Company shown under the heading current liabilities was to the tune of Rs. 4,41,60,964 as on March 31, 2013, which was Rs. 2,14,42,034 as on March 31, 2012. The inventories of the Company increased from Rs. 2,36,53,980 as on March 31, 2012 to Rs. 5,79,75,874, as on March 31, 2013.

- d. As per the Company’s profit & loss account for FY 2011-12, “Development expenses” of Rs. 84,50,687 were paid by the Company. During 2012-13, the Company had shown land purchase of Rs. 1,82,38,620. However, the “land Registry and other expenses” of Rs. 1,28,46,155 are shown as expense during the year.
- e. As noted from the balance sheets of the Company, the SCN alleged that during the period of year 2010-14, the Company had mobilized a sum of Rs. 13,45,05,100/- under its various schemes of accepting advance against land.

- 11. Before proceeding to examine the matter on merits, it would be appropriate to refer to the relevant provisions which have been alleged to be violated by the Noticees. The relevant extract of these provisions are as under:

Relevant extract of SEBI Act, 1992:

“11AA. 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.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

(3) Notwithstanding anything contained in sub-section (2) or sub-section (2A), any scheme or Arrangement:

- (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
- (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;
- (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);
- (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);
- (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);
- (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);
- (viii) under which contributions made are in the nature of subscription to a mutual fund;
- [(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,

shall not be a collective investment scheme.”

Further, under Section 12(1B):

“(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

Explanation- For the removal of doubts, it is hereby declared that, for purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer."

Relevant extract of CIS Regulations:

"No Person Other than Collective Investment Management Company to Launch collective investment scheme

3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme."

Relevant extract of PFUTP Regulations, 2003:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely

(a)...

"(t) 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."

12. Section 12(1B) of the SEBI Act, 1992 prohibits any person from sponsoring or cause to sponsor or carrying or cause to carry any collective investment scheme unless he obtains a certificate of registration from the Board in accordance with the CIS Regulations. As per Regulation 3 of CIS Regulations, a CIS can be carried, sponsored or launched only by a SEBI registered Collective Investment Management Company (hereinafter referred to as 'CIMC'). The CIMC needs to appoint a trustee who is registered with SEBI as a debenture trustee under SEBI (Debenture Trustee) Regulations, 1993 and also to obtain credit rating from a credit rating agency. The money payable towards subscription of units of CIS has to be made through cheque, demand draft or other banking channel and not in cash. CIMC is required to issue freely transferable unit certificates, to the investors, which are to be listed on the stock exchange. Further, the CIMC can launch only close ended scheme with minimum duration of three calendar years.
13. In order to determine whether the Company has violated the provisions of the SEBI Act, 1992, CIS Regulations and PFUTP Regulations, it has to be examined whether the

aforesaid schemes floated by the Noticee no. 1 satisfies the conditions as laid down in sub-section (2) of Section 11AA of the SEBI Act, 1992, so as to be termed as CIS.

14. In terms of Section 11AA (2) of the SEBI Act, 1992, as quoted above in para 11, such scheme or arrangement where payments or contributions made by the investors are pooled and utilized for the purpose of scheme or arrangement with a promise of return or profit and the scheme or arrangement is managed by the person collecting such contributions on behalf of the investors and the investors have no day to day control over the management or operation of the scheme, the said scheme would fall within the purview of CIS. However, sub-section (3) of Section 11AA provides that a scheme or arrangement offered by a person will not be treated as a CIS even if it satisfies the conditions mentioned in sub-section (2) or (2A) of section 11AA, if the said scheme or arrangement is made or offered by persons falling in any of the categories of businesses mentioned therein. It is noted that DGR was incorporated as private company in the year 2009 which was subsequently converted into public company in the year 2011. However, there is nothing on record to indicate that the business of the Company falls under any of the exceptions made in the sub-section (3) of Section 11AA of the SEBI Act, 1992 nor the Company has made any submission on this aspect in its reply dated December 26, 2018. Therefore, Schemes operated by the Company are not exempted under Sub-section (3) of Section 11AA of the SEBI Act, 1992.

15. In view of the above, it is now necessary to examine whether the schemes of the Company accepting advance for selling land plots satisfies the conditions prescribed under Section 11AA (2) of the SEBI Act, 1992 to be called as CIS. The features of the scheme, as brought out in the SCN and the reply filed by the Company, are analysed in respect of each of the four ingredients contemplated under Section 11AA (2) of the SEBI Act, 1992, as under:

A. Whether the contributions, or payments made by the investors were pooled and utilized solely for the purposes of the scheme or arrangement of DGR?

- a. It is observed that the Company was collecting meagre amounts ranging from Rs.125/- to Rs. 1,00,000/- from the customers/investors. It is also observed from the allotment letters of the Company that it did not mention any details of the area

of land allocated or specific allocation of land and it is further observed that the Company did not submit copies of any registry of land made in favour of any customer/investor. From the figures disclosed in the balance sheets of the Company for the relevant period, the SCN alleged that during the period of 2010 to 2014, the Company has mobilised a sum of Rs. 13,45,05,100/-. The details of advance accepted by the Company, as appearing in the balance sheets are as under:

Table – 5 (Details of money mobilised by the DGR)

Year	Current Liabilities (towards Land Advance)	Other Current Liabilities (towards Land Advance)	Total
2010-11	48,25,662	-	48,25,662
2011-12	-	2,14,42,034	2,14,42,034
2012-13	1,15,66,570	4,41,60,964	5,57,27,534
2013-14	1,12,500	5,23,97,370	5,25,09,870
			13,45,05,100

- b. I note that the Company vide its undated letter which was received by SEBI on November 27, 2014 (Annexure C to the SCN) has provided copy of sample 'Advance Registration Form' for booking plot in its project namely 'DGR Black Pearl'. On perusal of the same, I note that the advance was being accepted on the assurance that the residential plot was being developed by the Company. The very first para of the registration form reads as, "1. I/ We understand that DGR Farms & Leisures Limited (hereinafter referred to as the "company") is developing Residential Plots (hereinafter referred to as "plot(S)) in their integrated Residential Township, "DGR Black Pearl.....". Further, in para 12 of the Form it is mentioned that, "I/We am/are making this application with full knowledge that the Company is in the process of acquiring / obtaining / approvals/ part approvals in respect of the land and the project, where the plot will be allotted". Similarly, the Company vide its reply dated December 26, 2018 has enclosed a copy of an agreement entered into between one customer/ investor namely Mr. Abhay Agrawal and 'Geeta Sales and Developers' booking a singlex in the project 'Geetanjali Vihar'. The agreement has been executed on Rs. 1000/- stamp paper. On perusal of the said agreement copy, it is noted that though payment schedule has been prescribed in the

agreement, exact location of the 'house/ singlex' proposed to be purchased by the customer/ investor was not mentioned. The manner of accepting advance from the customer/ investors, as reflected in the booking form, booking agreement and balance sheet, reveals that the contributions are pooled from the investors and utilized for the purpose of the scheme.

- c. I note that the Company vide its reply dated December 26, 2018 has submitted that the funds raised from the prospective purchasers under these schemes are merged with the other real estate projects unconnected with the land development projects and are indistinguishable in the manner of their utilization and the same is also used for the ongoing corporate expenses and other business activities of development of residential and commercial activities unconnected with the land purchase schemes. The Company has also submitted that its obligation to repay the amount collected with interest or to deliver possession of the land arises only upon maturity and until then there is no restrictions on the Company on the manner of utilization of these funds. It is also submitted that in order to improve its profitability, the Company was not using entire proceeds of schemes for the development of land and rather it was investing part of the funds into other projects also. The Company has also contended that SEBI has erred in coming to a finding that the contributions or payments made by the investors are pooled and utilized solely for the purpose of scheme or arrangement.
- d. Further, I note that the Company has attempted to establish that the money accepted from the investors were utilized for the various purpose including business expenses, other business activities and making investment in other projects and not solely for the purpose of the scheme. The essence of the ingredient is that the money or contributions received from the investors are pooled by the Company and utilized for the scheme or arrangement being operated by the Company. The Company cannot escape from the liability merely because it was diverting the funds mobilized under one scheme to other scheme or project etc. which amounts to diversion of funds of investors. As mentioned in para 1 above, the Company has a limited paid up share capital of Rs. 61,44,000/- only, whereas, as per letter received from the Company on January 14, 2015, it has submitted that during the FY 2012-13, the Company purchased land of Rs. 1,82,38,620/- and incurred a cost of Rs.

1,28,46,155 in land development which taken as a total arrives at 3,10,84,775/-. Further, it is the Company's own statement made in its reply dated December 26, 2018 that, *"Noticee is in the business of development of land inter alia through construction of commercial and residential properties and division of land into plots for sale. The funds for purchase and development of land are raised by prospective purchasers of land under the schemes ..."*. The Company has also submitted that the funds raised from the prospective purchasers under these schemes are being merged and are indistinguishable in the manner of their utilization.

- e. From the above, it is clear that the Company was collecting money in small amounts from the customers/investors and that the amount collected from the customer/investor was pooled and against that the Company purchased certain lands. These lands were not demarcated nor registered in the individual names of the allottees. On the contrary, it is observed that these various schemes were investment schemes assuring high returns that were offered in the garb of booking land plots and the money collected under the investment scheme was also being utilized for other investment schemes of the Company. Thus, I find that the first condition that payments were made by the investors were pooled and utilized solely for the purposes of the scheme or arrangement stands satisfied.

B. Whether the contributions or payments were 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. As mentioned in para 2 above, the activities of the Company came into knowledge of SEBI after receipt of summon from the Judicial Magistrate First Class, Rewa in a complaint matter. The Company vide its undated letter which was received by SEBI on January 14, 2015 (Annexure E to the SCN) has provided copies of various circulars issued by the Company which deal with the features of its various scheme/ projects and has also submitted a few copies of certificates issued to the investors. Before examining the terms and agreement of the certificate issued by the Company to the investors, it would be appropriate to reproduce some of the

relevant table mentioned in those circulars issued by the Company indicating the return in terms of 'Expected appreciated value of Land' which are as under:

Table – 6 (Expected Return as Indicated in Circular No. 36/2012-13 dated May 01, 2012)

Product Type	Tenure in Month	Minimum Participation	Expected appreciated value of Land
D3-II-V	36	5,00,000	7,20,000
D3-II-X	36	10,00,000	15,50,000

Table – 7 (Expected Return as Indicated in Circular No. 43/2012 dated August 18, 2012)

(D100 -One Time Payment Plan - August 20, 2012 to October 31, 2012)

Land Size/No. of Unit	Land Cost/Total Participation (Rs)	Expected Return of Appreciated Land after 100 Month	Expected Return of Appreciated Land after 60 Month
500 Sq. ft	50000	1,50,000	1,00,000

- b. I note from the above that the Company vide its aforesaid Circulars has offered return at the rate of 14.3% per annum in D3-II-V plan, 18.33% per annum return in D3-II-X plan, 20% per annum return in 60 month tenure of D-100 plan and 24% per annum return in 100 month tenure of D-100 plan.
- c. On perusal of the copy of certificate issued by the Company to Mr. Devmuni Patel (the complainant who had filed complaint before the Criminal Court of Rewa), I note that the Complainant had made payment of Rs. 40,000/- in single payment on June 10, 2012 for the product type - D6 (plan or scheme). It is also noted that the customer/ investor was allotted 2.67 unit. The plan was started on June 10, 2012 and expiry date of the agreement was June 10, 2018 with expected value of appreciated land value of Rs. 85,360/- . Based on simple returns interest calculation, the assured return arrives at 18.9% per annum. Similarly, from the copy of certificate and receipt of payment issued by the Company to another

investor; Mr. Man Bahor Saket, I note that an investment of Rs. 50, 000/- was accepted by the Company on August 31, 2012 under plan D-100. It is also noted that the customer/ investor was allotted 3.3 unit. The expiry date of agreement was fixed on December 31, 2020 with expected value of appreciated land at Rs. 1,50,000/-. Based on simple returns interest calculation, the assured return arrives at 24 % per annum.

- d. The SCN mentions that the Company has not submitted any copy of registry of land made in the favour of customer/ investor. The Company in its reply dated December 26, 2018 has neither provided any copy of registered document of land executed in favour of any customer/ investor nor submitted any other proof to that effect. Instead, I find that the Company has provided a list of customers who have provided advances in the year 2017 and 2018 and whose advances have purportedly been adjusted in unit/plot of certain projects. However, the company has not furnished any copy of registry of land executed in favour of these customers.
- e. I note that the Company in its aforesaid reply has submitted that it offers an average rate of return of 12% per annum which is marginally higher than the rate of interest offered by banks on fixed deposits which is intended to compensate the customer/ investors for the lost time value of their money where the customer/investor choose not to pay the balance money required for making allotment of land plot and opt for refund. However, as detailed above, the Company has failed to submit even a single instance where land plot has been registered by the Company in favour of any customer/investor. Further, contrary to what is submitted by the Company in its reply, the rate of return assured to the customer/ investors were ranging from 14% to 24% per annum. Be that as it may, it is clear from the aforesaid that investors made contributions to the Company in expectation of high returns in the form of money or developed land.
- f. Noticees have not furnished any justification as to why the purchase consideration of a plot of particular size of land would remain the same irrespective of the fact that the plots would be allotted to the prospective customers in different locations even in the same project. Even the allotment letters don't mention the details of the plot allotted nor has the Company submitted any copy of registry of land

executed in favour of any customer/investor. I, therefore, find that the scheme offered by the Company was an investment scheme under the garb of allotment of land assuring high returns ranging from 14% to 24% per annum and the investors were attracted to make investment with a view to receive such high returns offered in garb of booking land plots. Therefore, I find that the second condition on whether the contributions or payments were 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 of the Company stands satisfied.

C. Whether the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, was managed on behalf of the investors?

D. Whether the investors did not have day to day control over the management and operation of the scheme or arrangement?

- a. The Company in its reply dated December 26, 2018 has specifically stated that the funds raised from the prospective customer under the schemes are merged with other funds of the Company in other real estate projects and are indistinguishable in the manner of their utilization and that the funds are also utilized for the ongoing corporate expenses and other business activities of the Company. It is also submitted that in order to improve profitability, the Company invest part of these funds into other projects also.
- b. As mentioned in para 12(B)(a) above, the Company has submitted a few copies of certificates issued to some of its customer/investors which starts with the wordings, *“CERTIFIED that the customer described in Schedule hereto is participant in the duly stamped joint venture of consideration as shown in Schedule under Plan of Company....it is hereby declared that schedule ‘General Terms & Conditions and others Terms of Rule book as amended from time to time, shall be deemed to be a part of this Certificate.”* The ‘General Terms & Conditions’ are printed overleaf which among other, at Sr. No. 9, provides that, *‘The Company reserves the right to, prospectively, discontinue, change, amend or*

modify any of the rules/ regulations and plans and introduce new plans at any time at its sole discretion with or without any notice'. Thus, it is apparent that the plan/ scheme of the Company is being carried out at the sole discretion of the Company and the customer/ investor has no say at all.

- c. I note that the Company has also not made any submission to the effect that the customer/investor has any role, status or participation in any manner in the affairs of the plan/scheme of the Company. As mentioned in para 6 above, the Company has stated that it also utilizes the fund mobilised from the investors for the purpose of office expenses. I, therefore, find that the contributions pooled from the investors were managed solely by the Company and the investors had no control over the management and operation of the scheme/plan. I note that the fourth condition is very crucial to hold any scheme/plan a 'collective investment scheme' as observed by Hon'ble Punjab and Haryana High Court in its judgement dated July 30, 2004 in the matter of *PGF Limited vs. Union of India & others* which reads as under:

"..... Day to day control with the customer/investor is one of the most important tests delineated by the Dave Committee for arriving at a final determination, whether or not; a scheme/arrangement is a "collective investment scheme"....."

- d. Therefore, I find that the third condition that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, was managed on behalf of the investors and the fourth condition that investors did not have day to day control over the management and operation of the scheme or arrangement, stands satisfied.

16. In view of the aforesaid discussions and analysis, I note that the schemes (of purchase of plot of land and its management and development) offered by the Company and its directors, fulfil all the conditions of CIS as provided under Section 11AA (2) of the SEBI Act, 1992. The Company in its reply dated December 26, 2018 has contended that if the purported reasoning of SEBI is to be adopted then any business activity involving payment by instalments would be covered under CIS and also that the Dave Committee Report was concerned mainly with the plantation bonds and agricultural bonds etc. In this

respect, it would be relevant to refer to and rely upon the observations made by the Hon'ble Securities Appellate Tribunal (SAT) in its Order dated May 12, 2017 in SAT Appeal No. 52 of 2016- *Pancard Clubs Ltd. vs. SEBI*, which reads as under

“....Although, initially, the CIS Regulations were restricted to the agricultural and plantation industry, the legislature found it imperative to enlarge the scope of these Regulations and bring all other schemes launched by corporates in any field under its fold, as long as such schemes fell within the four corners of the definition of CIS as provided by Section 11AA of the SEBI Act.”

It is pertinent to note that these conditions, when looked at individually, might seem to be fulfilled by a number of entities. However, in order to classify a scheme as a CIS, the aforementioned conditions need to be fulfilled collectively by a particular scheme. Therefore, any scheme that satisfies all four conditions under Section 11AA(2)(ii) comes under the definition of a CIS.

In our considered opinion, we find that a large chunk of investors established a pecuniary interest in the holiday scheme with the intention of exercising the option of 'surrender value' and receiving a profit on their investment, however small. Therefore, we hold that the condition mentioned under Section 11AA(2)(ii) of the SEBI Act is fulfilled by the scheme in question viz. the customers/investors in the CIS invested their money in the scheme with the intention to draw profits from the scheme.

It is a matter of record that the Appellants manage the contributions by way of investments in other properties, payment of the surrender value amount and other expenses. Nowhere does the customer actually manage or have the right to control his investment.”

17. I further note that the Company has provided a list of customers/investors who have paid advance for plot of land. However, the Company has not provided any details of whether the plot of lands were actually individually transferred in their name by execution of registered sale deed. The Company has not made any effort to satisfy that the investors were making advance with a view to acquire the plots of land. It has not submitted even a single copy of registered deed executed in favour of any customer. In this respect, it would be appropriate to refer to the observations made by the Hon'ble High Court of Gauhati in its order dated June 25, 2015 in the matter of Civil Writ Petition No. 4298/2013 *Rose Valley Hotels & Entertainments Ltd and Ors. Vs. State of Assam & Ors.* (“*Rose Valley Hotels*”), which was as under:

“There is no credible material placed by the petitioner to convince the court that all the members who have subscribed had the dominant intention of enjoying the stay at

the hotels. Only on the basis of the format of an application for subscription of membership it cannot be conclusively held that the scheme is only for enjoying the stay in the hotels. It could have been held so if there was no alternative term of refund of deposit with a lucrative rate of 17.6 percent per annum. This aspect of the matter requires a detailed enquiry about the names and identities of all the subscribers, their social status, their annual income, etc to find out how many persons have genuinely subscribed for membership for availing the benefit of stay in the hotel. On the basis of incoherent material produced by the petitioner like format of membership it is not possible to agree with the contention that the scheme is only a holiday management scheme and does not come under the purview of the collective investment scheme more so because of the fact that there is a term in the contract of refund of money with a lucrative rates of interest. If the interest on deposit was the alluring factor on the part of the investors then the case would squarely fall under sub-clause (ii) of sub-section 11AA of the SEBI Act....".

18. In view of the aforesaid findings, I find that the scheme/plan of the Company falls within the purview of CIS, as defined under Section 11AA (2) of the SEBI Act, 1992 and, therefore, the schemes of the Company were required to be registered with SEBI. The launching/ floating/ sponsoring/causing to sponsor any CIS and mobilization of funds from the public under such schemes can be done by any person only after obtaining requisite registration under section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations. In this regard, I note that the Company has not obtained any certificate of registration from SEBI under the CIS Regulations for its fund mobilizing activity from the public under various schemes offered by it and, therefore, I find that the Company has contravened provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations.
19. As per materials available on record, Mr. Rakesh Kumar Gupta (Noticee No. 2) and Mr. Umesh Soni (Noticee No. 3) are the promoters of the Company and also the first directors of the Company. The Company vide its letter which was received by SEBI on November 27, 2014, has submitted a list of 11 directors along with their address, PAN Number and mobile numbers, however, the dates of their becoming director and the date of resignation from the directorship, if applicable, has not been provided. As such, the details of date of their resuming and resigning the directorship of the Company, as applicable, has been made available from the records available on MCA 21, which is as under:

Sr. No.	Noticee No.	Name of the Noticee	Date of Joining Directorship	Date of Resigning from Directorship
1.	2.	Rakesh Kumar Gupta	27.10.2009	NA
2.	3.	Umesh Soni	27.10.2009	01.08.2014
3.	4.	Nivedita Gupta	25.01.2014	18.12.2014
4.	5.	Umesh Gupta	26.05.2011	28.04.2018
5.	6.	Alok Kumar Singh	20.10.2011	10.08.2015
6.	7.	Jainendra Kumar Patel	20.10.2011	10.08.2015
7.	8.	Sanjay Kumar Gupta	25.01.2014	10.08.2015
8.	9.	Shankar Lal Gupta	25.01.2012	22.01.2019
9.	10.	Vijay Kumar Shukla	25.01.2014	22.01.2019
10.	11.	Jitendra Kumar Tripathi	25.01.2014	20.02.2015
11.	12.	Sushil Kumar Dubey	24.07.2010	26.05.2011
12.	13.	Jitendra Kumar Patel	NA	20.10.2011

20. As detailed above, each of the Noticee Nos. 2 to 13 have been a director of the Company, for some tenure at least, during the relevant period, as per SCN, i.e. 2010-11 to 2013-14, when the Company was accepting money from the investors in the name of selling land plots under various schemes/ plans being operated in the nature of CIS. Thus, the directors (i.e. Noticee Nos. 2 to 13) who were in charge of and were responsible for the day to day affairs of the company as directors when the fund mobilisation activities were taken up by the Company.

21. I note that based on the figures provided in balance sheets of the Company for the relevant periods (2010-11 to 2013-14), the SCN has alleged that the Company has accepted a sum of Rs. 13,45,05,100/- as advance for land under its various plans/ schemes in the name of selling plots of land. The Company has filed its reply dated December 26, 2018, however, it has not disputed the amount alleged to be mobilized by the Company i.e. Rs. 13,45,05,100/-.

22. The SCN has also alleged that, since the money has also been mobilized in the year 2013 and 2014, the Noticee No. 1 to 13 have also violated the provisions of Regulation 4(2)(t)

of PFUTP Regulations. In this respect, I note that the PFUTP Regulations, 2003 was amended with effect from Sept 06, 2013, and clause (t) to Regulation 4(2), as referred to in para 11, was inserted in the Regulations.

23. As mentioned above, consequent to introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003, 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, are deemed to be fraudulent or unfair trade practices. The Company carrying on unregistered collective investment schemes and all those persons who are directors as on the date of introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003 on September 06, 2013, and thereafter, are liable for action for the violation of Regulation 4(2) (t) of PFUTP Regulations, 2003. Thus, the Company along with the directors i.e. Noticee Nos. 2 to 11, as reflected in the table give in para 19 above, who were directors of the Company as on September 06, 2013, are liable for the contravention of the provisions of Regulation 4(2) (t) of PFUTP Regulations, 2003, also.

DIRECTIONS:

24. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Sections 11(1), 11B, 11(4) read with Section 19 of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby issue the following directions:
- a. That DGR and its directors (Noticee Nos. 2 to 13) are jointly and severally liable to wind up its existing CIS and refund the contributions or payments collected from investors under the schemes with returns due to the investors within a period of three months from the date of this order. The refund and interest payment to the investors shall be effected only through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non-Transferable") or through internet banking channels such as NEFT or RTGS with appropriate audit trail. It is clarified that the Noticee Nos. 2 to 13 would be liable to make refund of such amount which is collected during the period of their respective directorship of the Company.
 - b. Upon completion of the refund as directed above, within a further period of fifteen days, DGR and its present directors shall submit a winding up and repayment report

to SEBI in the format provided under regulation 73 of the CIS Regulations. The report shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements of the Company indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants.

- c. That DGR and its directors (Noticee Nos 2 to 13) shall not divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of DGR or its Directors and they shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the Company except for the purpose of making refunds to its investors as directed above.
 - d. That DGR and the directors (Noticee Nos. 2 to 13) shall provide inventory of all the assets purchased in the name of the Company or directors (Noticee Nos. 2 to 13) including all assets movable and/or immovable wherein Noticees have interest directly or indirectly in whatsoever manner, to SEBI within a period of 15 days from the date of this order.
 - e. That DGR and the Noticee directors are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to the investors are complied with, as mentioned above, to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and thereafter for a further period of four years from the date of completion of the refund, as directed above. It is further clarified that the restrain to access securities market and prohibition from buying, selling or otherwise dealing in securities shall extend to their existing holding of securities including the units of mutual funds.
 - f. That the directors (Noticee Nos. 2 to 13) shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of four years from the date of this Order.
25. The winding up and repayment report and inventory mentioned hereinabove shall be forwarded to “The Division Chief, Enforcement Department 1, Division of Regulatory

Action 3, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

26. In case the Noticees fail to comply with the directions given in para 21 (a) above within the time mentioned therein, without prejudice to any other action, SEBI shall initiate recovery proceeding under Section 28A of the SEBI Act, 1992 against the Noticees.
27. A copy of this Order shall be forwarded to the Noticees, all the recognized Stock Exchange, depositories and registrar to issue and share transfer agents for ensuring compliance with the above directions.

Sd/

DATE: July 29, 2019

PLACE: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**