

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11B AND 11AA OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 65 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 AND REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF VINAYAK HOMES & REAL ESTATE LIMITED.

NOTICEE(S)		CIN	PAN
COMPANY			
1.	VINAYAK HOMES & REAL ESTATE LIMITED	U70101MP2010PLC024267	AADCV4004B
DIRECTORS / PROMOTERS		DIN	PAN
2.	YOGENDRA BISAY	02664008	AFQPB2353A
3.	JITENDRA BISAY	00128091	AFZPB2659A
4.	KALU SINGH VERMA	03397048	NA
5.	PHOOL CHAND BISAY	00128087	AIQPB4211L
6.	YUVRAJ SHRIRAM MALAKAR	07113606	AKYPY9430C

BACKGROUND

1. Securities and Exchange Board of India (“SEBI”) received a letter dated July 10, 2015 from Police Station-in-Charge, Champa, Dist-Champa Janjgir, Chhattisgarh, informing about the registration of an FIR against Vinayak Homes & Real Estate Limited (hereinafter referred to as “VHREL” / “the company”) in respect of illegal mobilization of money from public by the company by promising high returns on

investment in real estate. Thereafter, SEBI received multiple complaints and references of similar nature against the company.

2. Upon preliminary enquiry, it was observed that the company had collected funds from the public during the financial years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 through various plans under its schemes for purchase, development and maintenance of plot(s) of land. The above mobilization of funds was found to be, *prima facie*, in violation of provisions of the SEBI Act, 1992, the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the “CIS Regulations”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the “PFUTP Regulations”). In view of the same, SEBI passed an interim order-cum-Show Cause Notice dated December 24, 2018 (hereinafter referred to as “interim order”) and issued directions mentioned therein against VHREL and its Promoters/ Directors viz., Yogendra Bisay, Jitendra Bisay, Phool Chand Bisay, Kalu Singh Verma and Yuvraj Shriram Malakar (hereinafter collectively referred to as the “Noticees”).
3. In the said interim order, it was observed that, *prima facie*, the company had mobilized significant funds from the public under its scheme pertaining to purchase, development and maintenance of plot(s) of land. Upon a consideration of the material on record and having regard to the observations made by the Hon’ble Supreme Court of India in *P.G.F. Limited & Ors. Vs. UOI & Anr.* (AIR2013SC3702), it was, *prima facie*, held that the scheme pertaining to purchase, development and maintenance of land, as offered by the company, satisfied the four requirements of a ‘Collective Investment Scheme’, as defined in Section 11AA of the SEBI Act, viz.:
 - a. There was pooling of contributions,
 - b. Contributions were made with a view to receive assured realisable value/ returns,
 - c. The contributions were managed on behalf of the investors and

d. The investors did not have day to day control over the management of the scheme/ arrangement.

4. As the company had not obtained any Certificate of Registration from SEBI under the CIS Regulations, it was held that the schemes pertaining to purchase, development and maintenance of plot(s) of land has been carried out by the company in contravention of Section 12(1B) of the SEBI Act, 1992, read with Regulation 3 of the CIS Regulations. It was also held that the fund mobilizing activity of the company through the scheme pertaining to purchase, development and maintenance of plot(s) of land post September 06, 2013, *prima facie*, amounted to a fraudulent practice in terms of Regulation 4(2)(t) of the PFUTP Regulations. As per information available on the *MCA21 Portal*, the details of the present and past directors/ promoters of the company were as under:

Sr. No.	Name of the Person	DIN	PAN
1	Yogendra Bisay	02664008	AFQPB2353A
2	Jitendra Bisay	00128091	AFZPB2659A
3	Kalu Singh Verma	03397048	NA
4	Phool Chand Bisay	00128087	NA
5	Yuvraj	07113606	AKYPY9430C

The persons at Sr. Nos. 1, 2, 4 & 5 in the table above were the directors of the company at the time of passing of the interim order and continued to be responsible for the affairs of the company. They have also acted as directors during the period of fund mobilization. The person at Sr. No. 3 in the table above, Kalu Singh Verma, has acted as a director of the company in the past and had resigned from the directorship on 30/09/2011. However, since the material available on record contains Certificates/ Registration Letters dated 30/09/2011 issued by the company to the investors, it, *prima facie*, appeared that he was holding directorship in the company during the period of fund mobilization. Further, the persons at Sr. Nos. 1

and 2 in the table above are also the promoters of the company. As directors and promoters of the company, the aforementioned persons are liable for the alleged contraventions by the company.

5. As per the Balance Sheets of the company filed with the Registrar of Companies, the company has, *prima facie*, mobilized amounts of Rs.4,27,29,937/- as on March 31, 2014, and Rs.2,17,36,248/- as on March 31, 2015, outstanding as 'Advance Against Land Booking', under the schemes pertaining to purchase, development and maintenance of plot(s) of land.
6. In view of the, *prima facie*, findings on the violations, the following directions were issued against the Noticees in the said interim order dated December 24, 2018, with immediate effect:
 - a. Not to collect any fresh money from investors under its existing *Scheme*;
 - b. Not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;
 - c. Not to dispose of any of the properties or alienate the assets obtained directly or indirectly through the money raised by VHREL under its existing *Scheme*;
 - d. Not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of VHREL;
 - e. To immediately submit a full inventory of the assets owned by VHREL out of the amounts collected from the investors under its existing *Scheme*;
 - f. To furnish all the information sought by SEBI, including:
 - i. Copies of all the relevant documents issued by the company viz. Application Form, *Agreement*, *Certificate of Allocation*, *Allocation Letter*, etc.;

ii. *Scheme*–wise list of investors and their contact numbers and addresses, including –

- List of investors to whom land has been allotted and has got registered and
- List of investors who have been refunded.

iii. Details of amount mobilized till date;

iv. Details of amount refunded till date along with the details of mode of payment, duly certified by a Chartered Accountant;

7. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), 11B and 11AA of the SEBI Act read with Regulation 65 of the CIS Regulations and Regulation 11 of the PFUTP Regulations should not be issued/imposed, including the following directions, viz.:

- a. VHREL and its directors and promoters, viz. Yogendra Bisay, Kalu Singh Verma, Jitendra Bisay, Phool Chand Bisay and Yuvraj, to wind up the existing *Collective Investment Scheme* and to refund the money collected under the *Scheme* with returns which are due to investors as per the terms of offer of the said *Scheme*, supported by a Winding up and Repayment Report (in accordance with the CIS Regulations, 1999) to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- b. The Noticees to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of **four years** from the date of effecting the refund.

8. Vide the said interim order, the Noticees were given the opportunity to file their replies to the interim order, if any, within 21 days from the date of receipt of the order and to also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
9. **Service of the Interim Order:** The details of the service of the interim order-cum-SCN dated December 24, 2018, to all the Noticees is as under:

Sr. No.	Date of Interim Order-cum-SCN	Name of the Noticee	Date of the letter vide which interim order-cum-SCN sent to the Noticees	Delivery Status	Date of public notification
1	24.12.2018	Vinayak Homes and Real Estate Limited	26.12.2018	Undelivered	Paper publication done on March 20, 2019 (Times of India and Nai Duniya)
2	24.12.2018	Yogendra Bisay	26.12.2018	Undelivered	
3	24.12.2018	Jitendra Bisay	26.12.2018	Undelivered	
4	24.12.2018	Phool Chand Bisay	26.12.2018	Undelivered	
5	24.12.2018	Yuvraj Shriram Malakar	26.12.2018	Undelivered	
6	24.12.2018	Kalu Singh Verma	26.12.2018	Undelivered	Paper publication done on March 20, 2019 (Phir Swaraj)

10. As per available records, no reply to the interim order-cum-SCN has been received from any of the Noticees till date.
11. Further, in the interest of natural justice, vide notice of hearing dated August 30, 2019, all the Noticees were given an opportunity of personal hearing on September 25, 2019. As the hearing notice could not be delivered to the Noticees, it was delivered to the Noticees by way of affixture, except to Kalu Singh Verma and Yuvraj Malakar. In addition, vide notification dated September 14, 2019, published in newspaper Times of India and notification dated September 13, 2019, published in newspaper Nai Duniya, the Noticees were informed about the hearing date, time and venue. The Noticees were also advised that in case they failed to attend the hearing before SEBI, as scheduled, then the same would be construed as a waiver of the opportunity of personal hearing and SEBI would be constrained to proceed further in the matter, *ex parte*, based on the responses/ submissions and material as available on record. The status of service of hearing notice dated August 30, 2019 to all the Noticees is as under:

Sr. No.	Date of Interim Order/ SCN	Name of the Noticee	Delivery Status	Delivery of hearing notice through paper publication	Reply
1	24.12.2018	Vinayak Homes and Real Estate Limited	Affixture done on 04.09.2019	Paper publication on September 13, 2019 and September 14, 2019	No reply received from any of the Noticees
2	24.12.2018	Yogendra Bisay			
3	24.12.2018	Jitendra Bisay			
4	24.12.2018	Phool Chand Bisay			
5	24.12.2018	Yuvraj Shriram Malakar	Affixture could not be done		
6	24.12.2018	Kalu Singh Verma			

12. The Noticees have not provided any response to the hearing notice and neither did they appear for the hearing on September 25, 2019.

Consideration of Issues and Findings

13. I find that during the preliminary enquiry, SEBI had sent letters dated April 06, 2016, to the Noticees. All the letters, except that sent to Yuvraj Malakar, were duly delivered to the said Noticees. Reminder letters dated April 28, 2016, were also issued to the said Noticees. The said letters, except that sent to the company, returned undelivered. However, no response whatsoever was received from the company or its directors. A physical verification of the registered address of the company was carried on June 30, 2016. Though the office was found to be located at the said address, it was found to be closed at that time. A final reminder letter dated August 09, 2017, was issued to the company and its present and past directors, namely Yogendra Bisay, Jitendra Bisay, Kalu Singh Verma, Phool Chand Bisay and Yuvraj Malakar. However, all the letters returned undelivered. SEBI had also sought information from the auditor of the company; however, no response was received for the same.
14. I find that the interim order, which is also a show cause notice, has been duly served on the Noticees by way of substituted service through newspaper publication. No response to the interim order-cum-SCN has been received from the Noticees. I also find that in the interests of natural justice, the Noticees have been accorded the opportunity of personal hearing and the hearing notice in this regard has been duly served on them by way of affixture and newspaper publication. I find that neither did the Noticees respond to the hearing notice nor did they appear for the personal hearing.
15. In view of the above, I am of the opinion that the interim order-cum-SCN has been duly served on the Noticees; however, the Noticees have failed to reply to the same and have also not availed of the opportunity of personal hearing. In view of the same, I am inclined to decide the matter, *ex-parte*, taking into account the material available on record.

16. In this regard, it is pertinent to note that the following observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, *inter alia*, observed that "*..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".
17. It is also pertinent to note that the Hon'ble SAT, in the matter of Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, observed that: "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices...*".
18. In view of the above, I find that by not filing any reply to the interim order and by not availing the opportunity of personal hearing, the Noticees have not controverted the findings, which are subject to hearing and submissions of the Noticees, made against them in the interim order dated December 24, 2018, and hence, are liable for issuance of appropriate directions for the same.
19. I have considered the findings of the interim order and the material available on record. On perusal of the same, the following issues arise for consideration, each of which is dealt separately under different headings:
- a. Whether the scheme, as alleged in the interim order, has been launched and was run by VHREL?
 - b. Whether the major attributes of the scheme fall within the definition of collective investment schemes as defined in Section 11AA of SEBI Act?

- c. If so, whether the Noticees have violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations and are thus liable for issuance of necessary directions under various provisions of the law?

Issue No. 1: Whether the scheme, as alleged in the interim order, has been launched and was run by VHREL?

20. I have perused the interim order dated December 24, 2018, for the allegation of launching and running a collective investment scheme. I have also perused the documents/ information obtained from the MCA 21 Portal, documents received from the Police Station-in-Charge, Champa, Dist-Champa Janjgir, Chhattisgarh, investor complaints along with documents submitted therein and other documents available on record.
21. The following is, *inter alia*, noted from the examination of material available on record:
- a. From the copy of Application Form issued by the company, it is noted that the same pertains to a scheme for purchase of plots and development and maintenance of the same under 'Cash Down Payment Plan or 'Installment Payment Plan'. The Application Form provides for mentioning, *inter alia*, details such as Plan No., Name of Plan, No. of Plots, Area, Term (years), Total Consideration (Rs.), Expiry date of Agreement.
- b. Under 'General Terms and Conditions', the Application Form mentions, *inter alia*, "*The land shall be allotted in the name of Customer, in case of Cash Down Payment Plans, after receipt of full payment within a reasonable period generally not exceeding 365 days, and in case of Instalment Payment Plans, after receipt of 60% of total instalments. Subject to the foregoing, the land ownership*

would be ordinarily transferred in the name of customer within a reasonable period after allotment.”

- c. From the copy of sample ‘Agreement’ as contained in the Application Form, it is noted that the same, *inter alia*, states the following:
- i. That VHREL is engaged in the business of real estate and development and maintenance of agricultural land at various places.
 - ii. That VHREL organises the sale of agricultural land of different sizes to prospective buyers and undertakes the development and maintenance of the same.
 - iii. That the customer, by means of an application, has expressed his/her desire to buy the said agricultural land and has requested the company to arrange for the sale of the said agricultural land in his/her favour, and develop and maintain the same by rendering various services.
 - iv. That the company has agreed to arrange for the sale of agricultural land in favour of the customer and to develop and maintain the same by various services.
 - v. The customer shall be entitled for allotment of agricultural land and subsequent transfer of title and possession of the same in his favour by means of registered sale deed, within such period, after receipt by VHREL of full consideration in case of Cash Down Payment Plans and after receipt of 60% of the consideration in case of Instalment Payment Plans, as provided in the Application Form.
 - vi. The customer shall be the owner in possession of the land at all times.
- d. The sample Agreement issued by the company provides that since fragmentation into smaller size of plot(s)/land may not be practicable, feasible or permissible under relevant revenue laws, the customer shall have the requisite share along with other allottees/transferees in a particular piece of land and VHREL shall

execute/procure execution and registration of sale deed ensuring the title and interest of allottees/transferees in the joint holding with other customers. Accordingly, symbolic possession of the plots shall be handed over to the customer immediately after registration of the relevant sale deed so as to enable the company to implement the Agreement.

- e. It is noted that though the sample Application Form and the Agreement contained therein purportedly pertains to sale, development and maintenance of land, the same does not contain any provision for mentioning the particulars of the plot of land being offered, for example- location, Survey no. etc.
- f. It is further noted that the company has issued certificates titled as “Registration Letter” to the applicants which, *inter alia*, state that the company, subject to regular payment of subscriptions, shall pay to the certificate holder the amount due under the ‘Registration Letter’. The ‘Registration Letter’ contains, *inter alia*, details, such as, Name & Address of the person, Registration no. and date of commencement, Plan No. & Term, Agreed Cost of Product, Expected Cost of Product at End of Term, Amount of Instalment, Date of Expiry of Term, Expected Sum Payable, etc. The certificate also has ‘*First Payment Receipt*’ attached to it.
- g. It is noted that the certificate/ registration letter issued to the investors does not contain any detail whatsoever pertaining to allotment/sale of plot of land to the investor. Rather, it refers to payment of ‘Expected Sum Payable’ which appears to be the return on investment payable to the investor at the end of the term.
- h. From the copies of documents titled as ‘Plan Book’ issued by the company and other similar documents which have been forwarded to SEBI by the Officer-in-Charge, Janjgir Champa Police Station, some of the plans offered by the company are given in the Tables below. Apart from these Tables, the Plan Book also contains other similar Tables pertaining to plans named as ‘RIP’, ‘LPP’ and

‘MIS’ for varied amounts and terms. Though the term RIP is not defined in the available documents, it appears to be denoting a recurring investment plan where the investment has to be made in monthly, quarterly, half-yearly or yearly instalments and where the maturity amount is paid at the end of the term. Similarly, LPP and MIS, though not defined, seem to be denoting lump-sum payment plan and monthly income scheme where money has be invested as a lump-sum amount in one tranche but the benefits are paid monthly (under MIS) or as a lump-sum amount at the end of the term.

TABLE 1
(Special Mansoon Offer 6 & 1/2 year)

Amount	MIS-12	RIP-7	Maturity
7050	5300	1750	20500
10625	8000	2625	30750
14100	10600	3500	41000
21250	16000	5250	61500
28300	21300	7000	82000
35350	26600	8750	102500
42500	32000	10500	123000
49450	37200	12250	143500
56500	42500	14000	164000
63500	47800	15750	184500
70600	53100	17500	205000
77650	58400	19250	225500
84700	63700	21000	246000
91750	69000	22750	266500
98800	74300	24500	287200
105850	79600	26250	307500
112900	84900	28000	328000

Amount	MIS-12	RIP-7	Maturity
162250	122000	40250	471000
218650	164400	54250	635500
268100	201600	66500	779000
324500	244000	80500	943000
381000	286500	94500	1107000
437500	329000	108500	1271000
486750	366000	120750	1414500
543150	408400	134750	1578500
649000	488000	161000	1886000
705500	530500	175000	2050000
754750	567500	187250	2193500
811250	610000	201250	2357500
887750	652500	215250	2521500
917000	689500	227500	2665000
973500	732000	241500	2829000
1022750	769000	253750	2972500

Sample Tables under RIP, LPP & MIS Plans

TABLE 2

RIP- 7 (6.6 year)

MLY	QLY	HYL	YIY	Cost of Unit	Cost of PC Unit	ADC Risk*
77	225	440	875	6000	10250	9000
154	450	880	1750	12000	20500	18000
231	675	1320	2625	18000	30750	27000
308	900	1760	3500	24000	41000	36000

385	1125	2200	4375	30000	51250	45000
770	2250	4400	8750	60000	102500	90000

***ADC appears to be denoting Accidental Death Claim**

TABLE 3

RIP- 4 (5 year)

MLY	QLY	HYL	YIY	Cost of Unit	Cost of PC Unit	ADC Risk
100	295	585	1150	6000	8600	9000
200	590	1170	2300	12000	17200	18000
300	885	1755	3450	18000	25800	27000
400	1180	2340	4600	24000	34400	36000
500	1475	2925	5750	30000	43000	45000
1000	2950	5850	11500	60000	86000	90000
2000	5900	11700	23000	120000	172000	100000
3000	8850	17550	34500	180000	258000	100000
4000	11800	23400	46000	240000	344000	100000
5000	14750	29250	57500	300000	430000	100000

TABLE 4

LPP- 15 (12 year)

Amount of consideration	Payable Amount	ADC Risk Cover.
5000	20000	5000
10000	40000	10000
15000	60000	15000
20000	80000	20000

Amount of consideration	Payable Amount	ADC Risk Cover.
25000	100000	25000
30000	120000	30000
35000	140000	35000
40000	160000	40000
45000	180000	45000
50000	200000	50000

TABLE 5

MIS-12 (6 year)

Amount of consideration	Payable Every Year	ADC Risk Cover
10000	3300	5000
15000	4950	10000
20000	6600	15000
25000	8250	20000
30000	9900	25000
35000	11550	30000
40000	13200	35000
45000	14850	40000
50000	16500	45000
55000	18150	50000

TABLE 6

MIS- 14 (6 year)

Amount of consideration	Payable Every Monthly	ADC Risk Cover
10000	274	5000
15000	411	10000

20000	548	15000
25000	685	20000
30000	822	25000
35000	959	30000
40000	1096	35000
45000	1233	40000
50000	1370	45000
55000	1507	50000

(All amounts in the tables above are in Rs.)

- h. Apart from the above Tables, the Plan Book also contains other similar Tables pertaining to plans named as 'RIP', 'LPP' and 'MIS' for varied amounts and terms. Though the term RIP is not defined in the available documents, it appears to be denoting a recurring investment plan where the investment has to be made in monthly, quarterly, half-yearly or yearly instalments and where the maturity amount is paid at the end of the term. Similarly, LPP and MIS, though not defined, seem to be denoting lump-sum payment plan and monthly income scheme where money has be invested as a lump-sum amount in one tranche but the benefits are paid monthly (under MIS) or as a lump-sum amount at the end of the term.
- i. From the details contained in the Application Form, the sample Agreement and the copies of certificates/ registration letters issued by the company to the investors, the abovementioned Tables pertaining to the plans/schemes of the company and the annual returns of the company, which are available on record, it is noted that the company has collected funds from the public during the FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 through various plans under its schemes purportedly for purchase, development and maintenance of plot(s) of land. The various plans offered under the schemes provide the option of

investing money in monthly/quarterly/half-yearly/yearly instalments or as lump-sum payment and had varied tenures, like 3 years, 4 years, 5 years, 5 ½ years, 6 years, 6 ½ years, 8 years and 9 years, 12 years.

22. I note from the various documents, including financial statements filed by the company with Registrar of Companies, which have been accessed through the MCA21 portal, that the company had the following amounts outstanding as current liability on account of ‘Advance Against Land Booking’:

As on Date	Amount
March 31, 2012	Rs.1,30,35,000/-
March 31, 2013	Rs.3,37,69,937/-
March 31, 2014	Rs.4,27,29,937/-
March 31, 2015	Rs.2,17,36,248/-
March 31, 2016	Rs.1,91,75,687/-

Further, the copies of certificates issued by the company, which are available on record, pertain to the financial years of 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, indicating fund mobilization by the company during all these years. From the financial statements, it is observed that the maximum current liability, on account of ‘Advance Against Land Booking’, is Rs.4,27,29,937/-, at the end of FY 2013-14. This current liability has decreased in the subsequent financial years to Rs.1,91,75,687/-, at the end of FY 2015-16 and the company has not uploaded the financial statements for the years subsequent to FY 2015-16 on the MCA 21 website. It appears that the company may have refunded certain amount to the investors; however, no evidence to that effect has been submitted before SEBI. Therefore, if any such amount has been refunded by the company, appropriate evidence of payment will have to be provided by the Company. Appropriate directions in this regard are issued in the operative part of this Order. However, if no evidence of repayment is adduced as stipulated in the directions, then in view of the lack of

evidence on the repayment, the company is considered to have mobilized an amount of at least Rs.4,27,29,937/-.

23. In view of the above facts and coupled with the failure of the Noticees to furnish any reply disputing the charges levelled against them, I am constrained to draw the inference that the funds were mobilized by the Noticees. Therefore, I conclude that the scheme, as alleged in the interim order, has been launched and was run by VHREL.

Issue No. 2: Whether the major attributes of the scheme fall within the definition of collective investment schemes as defined in Section 11AA of SEBI Act?

24. On perusal of the material available on record, I now proceed to consider whether the four conditions mentioned in Section 11AA (2) of SEBI Act are satisfied in the instant arrangement/ scheme. Section 11AA (2) reads as follows:

(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 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) 40[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.

25. Perusal of the above section shows that any arrangement/ scheme to be considered as collective investment scheme has to satisfy the four conditions mentioned in

Section 11AA(2) of the SEBI Act and the same should not fall within any of the exceptions mentioned in Section 11AA(3) of the SEBI Act. I now proceed to examine whether the instant scheme satisfies each of the conditions mentioned in Section 11AA(2).

a. The contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

- i. VHREL has solicited money from customers towards schemes *for purchase of plot(s) and development and maintenance of the same*. It is noted from the material available on record that VHREL offered plans named ‘Cash Down Payment Plan or ‘Installment Payment Plan’. Under these plans, customer would purportedly be entitled to allotment of agricultural land and subsequent transfer of title and possession of the same in his favour by means of registered sale deed, within such period, after receipt by VHREL of full consideration in case of 'Cash Down Payment Plans and after receipt of 60% of the consideration in case of Instalment Payment Plans. It is observed that the amounts have been collected in instalments or as lump-sum amount.
- ii. I note that the investment amounts mentioned in the plans/ tables above are small and it does not appear that these amounts would enable the investor to obtain a particular piece of land entirely for himself/ herself. I find that the sample agreement also mentions that as fragmentation of a particular piece of land into small sizes is not possible, the investor shall have the requisite share in the land along with other allottees. Symbolic possession of the plots shall be handed over to the customer immediately after registration of the relevant sale deed so as to enable the company to implement the Agreement. There are no materials on record to indicate that purported purchasers have been granted joint ownership of any piece land. I note that Noticee have not

submitted any proof of any actual sale agreement, let alone the sale agreement to the purchasers with joint ownership of land parcel. Therefore, the arrangement cannot be in the nature of selling joint ownership of land.

- iii. The company has issued certificates/ registration letters to the applicants which, *inter alia*, state that the company, subject to regular payment of subscriptions, shall pay to the certificate holder the amount due under the 'Registration Letter'. This letter does not contain any detail whatsoever pertaining to allotment/sale of plot of land to the investor. Rather, it refers to payment of 'Expected Sum Payable', which is the return on investment payable to the investor at the end of the term. It is also noted that all complaints received by SEBI against the company pertain only to non-payment of maturity amount/returns on investments to investors by the company and do not make any reference to any allotment/ sale of plot(s) of land by the company.
- iv. From balance sheets of the company filed with RoC, it is observed that the company had disclosed a sum of Rs.4,27,29,937/- as on March 31, 2014, Rs.2,17,36,248/- as on March 31, 2015, and Rs.1,91,75,687/- as on March 31, 2016, as 'Advance against land booking'.

The above facts show that the 'contributions, or payments made by the investors, were pooled and utilized by VHREL for the purposes of the scheme or arrangement' and not for the purchase of an identified plot of land, the ownership of which was transferred to the investors. In the instant case, the scheme is to accept contributions/ payments from investors to deliver an expected sum payable to the investors at the end of the term. Hence, the instant 'scheme' satisfies the first condition stipulated in Section 11AA (2) (i) of the SEBI Act.

b. 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.

- i. On perusal of the certificates issued by the company as well as the Tables pertaining to various plans offered by the company, it appears that the investors had invested money in the scheme to get a return on their investment. It is noted that under the said scheme, the company appears to have offered returns mentioned as 'Expected sum payable' in the certificates pertaining to instalment plans or the 'Payable Amount' mentioned in the Tables in respect of the plans pertaining to lump-sum payment.
- ii. It is noted that the certificates issued by the company in respect of the investments made under instalment plans (RIP Plans) mention '*Expected Cost of Product at End of Term*' and '*Expected Sum Payable*' (identical amounts are mentioned against both entries), which appear to be the maturity amount (inclusive of return on investment) payable to the investor at the end of the term. Similarly, the Tables pertaining to MIS and LPP Plans refer to '*Payable Every Year*'/ '*Payable Every Month*'/ '*Payable Amount*', which appear to be the yearly/ monthly/ lump-sum returns being offered to the investors on the invested amount.
- iii. Further, on perusal of the copy of the certificate issued to an investor, it is noted that under a plan of R-07 which is for a term of 6 years and 6 months, the investor had invested Rs.36,750/- as first yearly instalment beginning on 30/09/2011 in respect of a total investment of Rs.2,52,000/- over 6 years and 6 months, which is mentioned in the certificate as 'Agreed Cost of Product'. As per the certificate, the term is to expire on 30/03/2018 upon which the investor is supposed to get the amount of Rs.4,30,500/- as the '*Expected sum payable*' mentioned in the certificate. Thus, it is clear that the investors'

contributions or payments towards such scheme have been made with an intention to receive profit/ income.

These facts show that the contribution/ investment is made by the investors in the scheme with a view to receive a return or earn profit. In view of the same, I conclude that the second condition, which stipulates that the contributions or payments are made to such arrangement/ scheme by the investors with a view to receive profits, income, produce or property, as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

c. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and

d. The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

i. I have already noted that VHREL has collected funds from general public through its various plans. As per the sample agreement contained in the Application Form, VHREL is engaged in the business of real estate and development and maintenance of agricultural land at various places. The agreement also states that the customer, by means of an application, has expressed his/her desire to buy the said agricultural land and has requested the company to arrange for the sale of the said agricultural land in his/her favour, and develop and maintain the same by rendering various services.

ii. The agreement further states that VHREL shall have the right to develop and maintain the agricultural land in consultation with agro-consultants and experts and the customer shall not ordinarily interfere with the method and mode of development and maintenance of the land. The company shall

employ its own employees to carry out development and maintenance of the land and bear the expenses. The company shall be responsible for arranging sale of produce, if any, out of the said land which shall be accepted by the customer. Further, the company shall have the sole discretion to decide as to whether the produce shall be sold to the wholesale market and/ or to the semi-wholesale market and/ or to one or more marketing company of VHREL, as considered appropriate by VHREL. The sale price of the produce shall be decided by VHREL and the net proceeds so obtained shall be accepted as final by the customer.

- iii. Further, I observe that the agreement does not have any feature which states that the funds collected under the plans can be managed by the investor themselves or they have any say or control as to how and where the money has to be invested by the company.

This leads to the conclusion that the investments forming part of the scheme are managed by VHREL on behalf of the investors and that the investors do not have day-to-day control over the management of the contributions made to the scheme. Therefore, it is clear that the instant schemes/ plans satisfy the conditions stipulated in Section 11AA (2) (iii) & (iv) of the SEBI Act.

- 26. As regards the exclusions mentioned in Section 11AA(3) of the SEBI Act, I note that there is no material on record to show that any of the exclusions are applicable to VHREL. Therefore, I conclude that the exclusions mentioned in Section 11AA(3) of the SEBI Act are not applicable to VHREL.
- 27. In view of satisfaction of all the four conditions and non-applicability of exclusions, I find that the instant arrangement/ schemes falls within the definition of collective investment schemes. As all the four conditions specified under Section 11AA(2)(i) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the Noticees are in the nature of a collective investment

scheme in terms of Section 11AA(1) of the SEBI Act. In this regard, it would be relevant to place 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):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act.

... It is needless to state that 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. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, 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 ...".

28. In view of the aforementioned observations of the Hon'ble Supreme Court of India in the case of PGFL and in view of the abovementioned findings on features of the schemes/plans offered by VHREL, I find that the activity of fund mobilization by VHREL with a resultant promise of returns in terms of money clearly falls within the ambit of collective investment schemes as defined in Section 11AA of the SEBI Act.

Issue No. 3: If so, whether the Noticees have violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations and are thus liable for issuance of necessary directions under various provisions of the law?

29. Section 12 (1B) of SEBI Act stipulates that 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 unless he obtains a certificate of registration from the Board in accordance with the regulations. The stipulation is on every person who

sponsors or cause to be sponsored the collective investment scheme. It may be seen in a typical sponsoring of collective investment scheme, the company though in the eye of the law sponsors the schemes, the same is cause to be sponsored by the directors who are involved in the sponsoring of the scheme. In view of this, the prohibition not to launch the unregistered CIS is on the Company as well as the directors independently. Even otherwise after the introduction of Regulation 4(2) (t) of the PFUTP Regulations, the unregistered collective investment activity is considered as fraud under FUTP Regulations.

30. It is a settled principle of law, that in case of fraud the corporate veil of the company can be lifted to see the real perpetrators of fraud. Since the Company is caused to sponsor the unregistered CIS schemes, which includes collection of contributions as part of the scheme, by the directors on behalf of the Company, it would be appropriate that the corporate veil in this regard can be pierced to see the real perpetrators. The SEBI Act along with the CIS Regulations, provide for various remedies in the interest of investor protection. Section 11B of the SEBI Act being one of the pivotal measure for the purpose of investor protection under which remedial tool of refund is envisaged. CIS Regulations provides for two different set of measures under Regulation 65(c) and Regulation 65(d) of the CIS Regulations. Under Regulation 65(d) of CIS Regulations, SEBI has powers to direct the disposal of the assets of the collective investment scheme in a manner as may be specified in the directions which can be by way of winding up of the scheme. Under Regulation 65(d) of CIS Regulations, SEBI has powers requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the collective investment scheme. SEBI Act also has prescribed the other set of measures under Section 11B of the SEBI Act. Therefore, SEBI in exercise of its mandate under Regulations 65 of the CIS Regulations read with Section 11B of the SEBI Act can take various investors measures in case of unregistered collective investment advisory activities. The said measures can include directing winding up of the schemes and direction to refund the money collected. While the Schemes can be directed to be wound up for repayment of the contributions of the investors, it does not absolve the obligation of the directors who

collected the money on behalf of the company by causing the company to launch unregistered collective investment schemes from repayment. Therefore, the directors who collected the money on behalf of the company are also liable for repayment under Section 11B of the SEBI read with Regulation 65(d) of CIS Regulations to refund the money collected by them, during their tenure of directorship. Accordingly, the contributions collected are liable to be repaid both by winding up of the scheme of the company and by repayment by the directors in their personal capacity. However, as stated earlier the liability of the directors is independent and the same can be enforced by way of direction to make refund under Regulation 65(d) of CIS Regulations read with Section 11B of SEBI Act.

31. In the instant case, I have already found that the scheme/ plan offered by VHREL is a 'collective investment scheme'. It is also observed that such fund mobilizing activity by VHREL was carried out without obtaining a certificate of registration from SEBI, thereby contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Hence I am of the view that VHREL is liable for directions to wind up the existing collective investment scheme and refund the money collected under the schemes with returns, which are due to investors, as per the terms of offer of the said schemes.
32. From the material available on the MCA21 Portal, the details of the directors of VHREL as below:

Sr. No.	Name of Director	Date of Appointment	Date of Cessation, if any
1	Jitendra Bisay	September 07, 2010 till date	Continuing
2	Yogendra Bisay	September 07, 2010 till date	Continuing
3	Phool Chand Bisay	December 02, 2010 till date	Continuing
4	Kalu Singh Verma	March 07, 2011	September 30, 2011
5	Yuvraj Shriram Malakar	July 13, 2015	February 09, 2019

33. **Jitendra Bisay and Yogendra Bisay:** I note from the documents available on the website of MCA that both Jitendra Bisay and Yogendra Bisay have been directors in VHREL since September 07, 2010 till date. I find that in their capacity as directors of VHREL, they have signed the financial statements, which are uploaded to the RoC website, for the years 2010-11, 2011-12, 2012-13, 2013-14, while Jitendra Bisay has also signed the financial statements for the years 2014-15 and 2015-16. Therefore, I note that Jitendra Bisay and Yogendra Bisay, in their capacity as directors of VHREL and signatories to the financial statements were fully aware of the fund mobilization being carried out under various schemes. Further, they continue to act as directors of VHREL and have not refuted their participation in the affairs of the company. Therefore, I find that they have violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Hence I am of the view that they are liable to make refund to the investors of the amount mobilized under the various schemes launched by VHREL.
34. **Phool Chand Bisay:** I note from the documents available on the website of MCA that Phool Chand Bisay has been a director in VHREL since December 02, 2010 till date. I find that even though he is listed as an independent and non-executive director in VHREL (since December 2010), he has signed the financial statements, which are uploaded to the RoC website, for the years 2014-15 and 2015-16. Therefore, I note that Phool Chand Bisay, in his capacity as director of VHREL and signatory to the financial statements was fully aware of the fund mobilization being carried out under various schemes. Further, he continues to act as a director of VHREL and has not refuted his participation in the affairs of the company. Therefore, I find that he has violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Hence I am of the view that he is also liable to make refund to the investors of the amount mobilized under the various schemes launched by VHREL.
35. **Kalu Singh Verma:** As per MCA records, he was a director in VHREL from March 07, 2011 and his date of cessation as a director is September 30, 2011. There is material on record of certificates/ registration letters dated September 30, 2011, issued by VHREL to investors. Further, as on March 31, 2012, it is noted that the

company has a current liability of Rs.1,30,35,000/-, as 'Advance Against Land Booking'. While there is material on record to show that funds were collected from the public on 30/09/2011, I note that his resignation as a director in VHREL is also effective from that same date. Further, there is no adequate evidence to show that funds were mobilized by VHREL prior to this date and during his tenure as a director. In view of the same the benefit of doubt is extended to Kalu Singh Verma and no directions are issued against him for refund of funds mobilized by the company during his tenure. However, I note that the scheme of collecting funds from the public would have been launched during the tenure of his directorship or in other words, the company has been caused to launch the scheme during his directorship. Therefore, I find that he has violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Hence, in view of his failure to discharge his obligation of not causing the company from launching the scheme, Kalu Singh Verma is liable for issuance of appropriate directions. However, I note that he had been a director for around seven months. Keeping in mind the duration of his directorship, appropriate directions are incorporated in operative part of the order. Here, I note that the present proceedings only render findings, *inter alia*, on the basis of material presently available on record. In case any further material/ complaint comes to the notice of SEBI which indicates that VHREL had mobilized funds during the tenure of directorship of Kalu Singh Verma, then it goes without saying that SEBI shall also initiate recovery proceedings against him to pay to the investors.

36. **Yuvraj Malakar:** As per MCA records, he was a director in VHREL from July 13, 2015 till February 09, 2019. From the financial statements available on the website of MCA, it is noted that the company has a current liability of Rs. 1,91,75,687/- as on March 31, 2016, as 'Advance Against Land Booking'. The material available on record shows that VHREL has issued certificates to investors dated 30/04/2015 i.e., before the joining of Yuvraj Malakar as director in VHREL and there is no adequate material on record to show that funds have been mobilized by VHREL after the joining of Yuvraj Malakar as director. Hence the benefit of doubt is extended to Yuvraj Malakar with respect to mobilization of funds during the tenure of his directorship. I note that while he has ceased to be a director in VHREL, in view of

the non-payment of money collected by virtue of collective investments, the scheme is considered to be still continuing with the money collected by the company. Hence, during the tenure of his directorship, Yuvraj Malakar was liable for running/operating the collective investment schemes and therefore, he has violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In view of that he is liable to be issued appropriate directions.

37. However, I note that the present proceedings only render findings, *inter alia*, on the basis of material presently available on record. In case any further material/complaint comes to the notice of SEBI which indicates that VHREL had mobilized funds during the tenure of directorship of Yuvraj Malakar, then it goes without saying that SEBI shall initiate recovery proceedings against him to pay to the investors.

38. In respect of the allegation of violation of Regulation 4(2)(t) of the PFUTP Regulations, it may be noted these Regulations were amended with effect from September 06, 2013 and Clause (t) to Regulation 4(2) was inserted which reads as follows:

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."

39. Subsequent to introduction of Regulation 4(2) (t) of the PFUTP Regulations, the activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any

person is deemed to be fraudulent. The company carrying on unregistered collective investment schemes and all those persons who are directors as on and after the date of introduction of Regulation 4(2) (t) of PFUTP Regulations on September 06, 2013, will be liable for action, for violation of Regulation 4(2) (t). In the instant case, it is observed that VHREL has mobilized funds during the years FY 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 and in view of the non-payment of money collected by virtue of collective investments, the scheme is considered to be continuing with the money collected by the company.

40. Therefore, the activity of the Noticees viz., VHREL, Jitendra Bisay, Yogendra Bisay and Phool Chand Bisay fall within the ambit of Regulation 4(2) (t) of the PFUTP Regulations as they were directors of VHREL on the date of introduction of Regulation 4(2) (t) of the PFUTP Regulations (September 06, 2013) and continue to be its directors. While Yuvraj Malakar was appointed as a director of VHREL after the introduction of this Regulation, in view of the non-payment of money collected by virtue of collective investments, the scheme is considered to be continuing with the money collected by the company. Hence, his activities as a director also fall within the ambit of Regulation 4(2) (t) of the PFUTP Regulations. Therefore, VHREL, Jitendra Bisay, Yogendra Bisay, Phool Chand Bisay and Yuvraj Malakar were illegally carrying on a collective investment scheme and these directors were causing VHREL to carry on with the illegal collective investment scheme and hence, I find that the same amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the PFUTP Regulations.

Order:

41. In view of the above, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4), 11B and 11AA of the SEBI Act read with Regulation 65 of the CIS Regulations and Regulation 11 of the PFUTP Regulations, hereby issue the following directions:

- a. Vinayak Homes and Real Estate Limited (PAN: AADCV4004B) shall wind up the existing Collective Investment Scheme and refund the money collected under the schemes with returns, which are due to investors, as per the terms of offer of the said schemes, within a period of three months from the date of this Order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with clear identification of beneficiaries and backed up with supporting bank documents.
- b. The present directors of VHREL namely Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall ensure that directions under para 41 (a) above are complied with.
- c. Upon completion of the refund as directed at para 41 (a) above, within further period of seven days, VHREL and its present directors namely Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall submit a winding up and repayment report ("WRR"), jointly or severally, to SEBI in accordance with the CIS Regulations. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.
- d. In case of failure of VHREL to repay the investors as per directions at para 41 (a) above, within a further period of two months, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall, in their personal liability to make the refund, jointly and severally with VHREL, refund the money collected by the company during their respective period of directorship under the schemes with returns, which are due to investors, as per the terms of offer. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with

clear identification of beneficiaries and backed up with supporting bank documents.

- e. Upon completion of the refund as directed above in para 41 (d) above, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall file a report of such completion of payment with SEBI, within further period of seven days, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.
- f. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant who has been categorized so by the Institute of Chartered Accountants of India and is holding a valid peer review certificate. It shall be ensured by VHREL and its present directors that none of the Chartered Accountants appointed for the purpose mentioned in paras 41 (c) and (e) above, shall be those who have audited the financial accounts of VHREL since its incorporation or have been or are associated, directly or indirectly, with any other company where the Noticees are promoters or/and directors.
- g. In event of failure by VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay to comply with the directions mentioned in paras 41 (a) and (d) above, SEBI shall initiate recovery proceedings under the SEBI Act against VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay.
- h. VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of these directions.

- i. VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall not divert any funds raised from public at large which are kept in bank account(s) and/ or in the custody of VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay and they shall not alienate or dispose of or sell or create any encumbrance on any of their assets, except for the purpose of making refunds to its investors as directed above.
- j. VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall abstain from collecting any money from the investors in respect of the schemes identified as a Collective Investment Scheme in this Order.
- k. VHREL, Yogendra Bisay, Jitendra Bisay and Phool Chand Bisay shall, with immediate effect, be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, till the directions for refund/repayment to the investors are complied with, as directed at pre paras to the satisfaction of SEBI and WRR/ Report of completion of payment with SEBI is submitted to SEBI and the said prohibition shall continue for a further period of **four years** from the date of completion of the refund, as directed above.
- l. Yuvraj Malakar shall, with immediate effect, be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly for a period of **four years** from the date of this Order.
- m. Kalu Singh Verma shall, with immediate effect, be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly for a period of **one year** from the date of this Order.

- n. Needless to say, in view of prohibition on dealing in securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of VHREL, Yogendra Bisay, Jitendra Bisay, Phool Chand Bisay, Kalu Singh Verma and Yuvraj Malakar shall remain frozen.
- o. Yogendra Bisay, Jitendra Bisay, Phool Chand Bisay, Kalu Singh Verma and Yuvraj Malakar shall be restrained from holding positions as directors or key managerial personnel of any listed company or any intermediary registered with SEBI and they shall be restrained from being associated with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period equal to the period of their debarment from the date of this Order.
41. The above directions shall come into force with immediate effect.
42. Since the present proceedings only render findings, *inter alia*, on the basis of material presently available on record, in case any further material/ complaint comes to the notice of SEBI which indicates that VHREL had mobilized funds during the tenure of directorship of Yuvraj Malakar and Kalu Singh Verma, then it goes without saying that SEBI shall initiate recovery proceedings against Yuvraj Malakar and Kalu Singh Verma to pay to the investors.
43. A copy of this Order shall be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents for information and necessary action.
44. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the company and the individuals.

45. A copy of this Order shall also be forwarded to the Local Police/ State Government for their information and necessary action, as deemed appropriate by them.

Date: October 30, 2019

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA