BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/ 9420-9430]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:-

Noticee No.	Name of the Noticees	PAN
1	Kalpbut Real Estate Limited	AADCK3482E
2	Mr. Bhanu Pratap Singh	AENPS9792L
3	Mr. Krishan Pal Singh	AMYPS0600G
4	Ms. Guddi Devi	AJXPD0444R
5	Mr. Rajendra Singh Thakur	ABUPT7761N
6	Mr. Parvesh Kumar Singh	DEWPS4079J
7	Mr. Natthu Singh	DKBPS2620L
8	Mr. Raksha Pal Singh	BDSPS9886A
9	Mr. Devendra Pal Singh	BJVPS0029N
10	Ms. Rajeshwari Sengar	AVZPS2724H
11	Mr. Pooran Prakash	ALLPP2252K

In the matter of Kalpbut Real Estate Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (SEBI), vide an ex – parte interim order dated December 10, 2014, in the matter of Kalpbut Real Estate Limited (hereinafter referred to as **KREL** or **the company**) issued certain directions in respect of Kalpbut Real Estate Limited (Noticee no. 1) and its Directors viz., Mr. Bhanu Pratap Singh (Noticee no. 2) , Mr. Krishan Pal Singh (Noticee no. 3), Mrs. Guddi Devi (Noticee no. 4), Mr. Rajendra Singh Thakur (Noticee no. 5), Mr. Parvesh Kumar Singh (Noticee no. 6),

Mr. Natthu Singh (Noticee no. 7), Mr. Raksha Pal Singh (Noticee no. 8), Mr. Devendra Pal Singh (Noticee no. 9), Mrs. Rajeshwari Sengar (Noticee no. 10), Mr. Pooran Prakash (Noticee no. 11) hereinafter, all the Noticees are collectively referred to as 'the Noticees'. By the said order the Noticees were *inter alia* directed-

- *not to collect any fresh money from investors under its existing schemes;*
- *not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- *to immediately submit the full inventory of the assets including land obtained through money raised by KREL;*
- *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by KREL;*
- *not to divert any funds raised from public at large which were kept in bank account(s) and/or in the custody of KREL.*

2. The above ex–parte interim order was also treated as a show cause notice and the Noticees were called upon by said order to show cause as to why appropriate directions under the SEBI Act and SEBI (Collective Investment Schemes) Regulations, 1999 (CIS Regulations) including directions in terms of Regulations 65 of the CIS Regulations should not be issued against them. The Noticees vide letter dated January 27, 2015, submitted a common reply to the interim order.

3. Subsequently, vide final order dated July 03, 2015, SEBI issued following directions to the Noticees, under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999;

    - *Noticees shall abstain from collecting any money from the investors in respect of the schemes identified as a Collective Investment Scheme.*
    - *Noticees were restrained from accessing the securities market, including by way of sponsoring or causing to sponsor or carrying on or causing to carry on any Collective Investment Schemes, and were prohibited from buying, selling or otherwise dealing in securities market, for a period of four years.*
    - *Noticees shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with interest at the rate of 15% per annum within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be*

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

- *Noticees shall not alienate or dispose off or sell any of the assets of Kalpbut Real Estate Limited except for the purpose of making refunds to its investors.*
- *Noticees were directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.*

4. Thereafter, the Noticees (the Company and aforementioned directors) challenged the said SEBI Order dated July 03, 2015, by filing an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide Order dated November 23, 2017 while disposing of the appeal (SAT Appeal No. 447 and 448 of 2015) observed as under;

"3. Counsel for SEBI states that the refunds allegedly made by the appellants are yet to be verified by SEBI.

4. Since appellants are willing to comply with the impugned order by refunding the entire amount collected, without going in to the merits of the argument as to whether the schemes floated by the appellant no. 1 constituted CIS or not, we dispose of the appeal by permitting the appellants to make a representation to SEBI within a period of eight weeks from today setting in detail the name and the quantum of amount already refunded and the mode and the manner in which the balance amount would be refunded. Appellants in the representation shall also set out their grievances relating to the interest liability.

5. If the appellants make a representation within a period of eight weeks from today, then, SEBI shall consider the said representation and pass appropriate order thereon. If the appellants fail to make representation within a period of eight weeks from today, then SEBI is at liberty to implement the impugned order.

6. Appellants shall furnish list of their assets to SEBI within a period of eight weeks from today. Appellants shall also furnish any other information/ documents that may be demanded by SEBI.

7. Both the appeals are disposed of in the aforesaid terms with no order as to costs."

5. In light of the above facts, Adjudication proceeding against KREL and its directors (Noticees) was initiated as the Noticees were allegedly engaged in operating Collective Investment Scheme by mobilizing funds from the public, as defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992"), in contravention of the Section 12 (1B) of the SEBI Act, 1992.

6. While the aforesaid proceedings against the Noticees were ongoing, SEBI, vide confirmatory order dated February 28, 2019, observed that no representation was made by the Noticees as directed vide

SAT order dated November 23, 2017, nor any detail was submitted with respect to refund made to the investors by KREL. In view of the above, Noticees were directed to comply with the SEBI Order dated July 3, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

7. Vide order dated October 27, 2016, the undersigned was appointed as Adjudicating Officer in the matter under Section 15 I (1) of Securities and Exchange Board of India Act, 1992 ("SEBI Act") to inquire and adjudge the alleged violation of section 12(1B) of the SEBI Act and regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999, (hereinafter referred to as '**the CIS Regulations'**) and Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003 and if satisfied that the Noticees are liable for imposition of penalty, may impose such penalty in terms of rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as 'AO Rules') and under the provisions of Section 15D(a) and 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A common Show Cause Notice dated November 22, 2017 (hereinafter referred to as **'SCN'**) was issued to the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) read with section 15 I of the SEBI Act; and penalty be not imposed under Section 15D(a) and 15HA of the SEBI Act for the alleged violations.

9. SCNs issued to Noticee no. 2-10 were returned undelivered by the Postal Department with remarks *'Incomplete Address'.* Further attempts were made to place delivery, however the same were unsuccessful. However, SCN was duly served upon Noticee no.1. Thereafter, Noticee no.1 vide letter received by SEBI on December 29, 2017, made its preliminary submissions to the SCN, wherein Noticee no. 1 requested to keep the current proceedings in abeyance in light of pending SAT appeal.

10. Subsequently, in the interest of principles of natural justice, the Noticees vide Hearing Notice (HN) dated March 05, 2018, were granted an opportunity of personal hearing in terms of rule 4(3) of the Adjudication Rules, on March 12, 2018, wherein the Noticees were advised to attend the hearing at Northern Regional Office (NRO) office of SEBI in New Delhi. The said Notice of hearing was sent to the Noticees through the Department of Post. Although, HNs issued to all the Noticees had returned undelivered, however, Noticee no. 2 vide letter dated March 23, 2018 acknowledged the receipt of SCN dated November 22, 2017 and HN dated March 05, 2018 and requested to keep the current proceedings in abeyance in light of pending SAT appeal.

11. Thereafter, a Notice under Rule 7(d) of the Adjudication Rules was published on July 27, 2018 in Hindustan Times and regional newspaper(s) at the registered office place of the Noticees, through which the Noticees were advised to collect the copy of the SCN within 07 days of publication of the aforesaid notice and to submit their reply, if any, within 14 days. The SCN was also uploaded at SEBI website under the head of "Enforcement - Unserved Summons/Notices".

12. Vide aforesaid public notice, the Noticees were also granted opportunity of hearing at NRO of SEBI on August 07, 2018, wherein it was clearly mentioned that in case Noticees fail to submit their reply to the SCN or avail opportunity of personal hearing in the matter, the matter shall be proceeded further on the basis of material available on record.

13. On the scheduled date of hearing, Authorized Representative (AR) of all the Noticees appeared before the undersigned and undertook to submit reply to the SCN anytime on or before August 29, 2018. However, no such reply was submitted by the Noticees on the promised date. Subsequently, the AR of the Noticees once again appeared before the undersigned on September 4, 2018 and requested for extension of time to submit their written reply under current proceedings.

14. The AR submitted written reply on September 20, 2018 on behalf of all the Noticees. The key submissions made by AR of the Noticees, are summarized below:
    - *The Show Cause Notice is based on totally unfounded, uncogent and/or unsubstantiated materials as it based its findings on mere conjectures and surmises.*

- *Noticee no. 1 was never involved in any Collective Investment Scheme (CIS) as mandated by SEBI Act. It is also a matter of record that there was absolutely no pooling of funds in respect of impugned transactions since the business carried out by the notices was in the nature of casual and routine real estate business, as such the monies received was only 'sale considerations' from the investors.*
- *The Noticees have already refunded a substantial amount out of Rs. 15.65 Crores, collected from its investors and that the Noticee no. 1 is in due process of refunding the leftover balance amount out of the collected amount to the respective investors, as in terms of the decision dated 23.11.2017 passed by SAT, in appeals No. 447 and 448 of 2015.*
- *The SCN is assailed on the ground that an adjudicating officer can be appointed under Section 5-I of the SEBI Act, 1992, hereinafter "The Act", only where SEBI forms an opinion that there are grounds for adjudging under any provisions of Chapter VIA of the Act (which includes Section 15A). However, in the present case, no such opinion was formed by the Board that there are grounds for adjudging under any provisions of Chapter VIA of the Act and, therefore, the appointment of the Adjudicating Officer is without jurisdiction. Further the proceedings of imposition of penalty cannot be initiated without a prior order under Regulation 14 of the SEBI (PIT) regulations, 1992, and therefore, the proceedings initiated against the Noticees are without jurisdiction and contrary to the law.*
- *The SCN is challenged on the premise that the proceedings for imposing penalty could not be initiated without a prior order under Regulation 14 of the PIT Regulations. It is averred that in terms of Regulation 14A of the PIT Regulations, the Board was required to undertake an investigation in case of any suspicion with respect to any violation of the PIT Regulations. Needless to say, the PIT Regulations provide for conduct of investigation in such type of controversies. Further in such a case the board is required to communicate the findings of the investigation and to provide an opportunity to the concerned person to respond/rebut to the said investigation. Further, the board was empowered to issue orders under Regulation 11 of the PIT Regulation after considering any explanation that was specifically furnished by the notices on previous occasions. It is stated that Regulation 14 of the PIT Regulation expressly provided that if a person had violated the provisions of the Regulation, he would also be liable for appropriate action including under Chapter VIA of the Act. The scheme of the PIT Regulation make it abundantly clear that the Board was first required to exhaust the process of investigation*

and then from a 'firm opinion' against the notices. The question whether any penalty was required to be imposed would arise only after the Board had formed a 'firm opinion'. It is asserted that any order passed by the Board would also be appealable before the Securities Appellate Tribunal in terms of Regulation 15 of the PIT Regulations. However, in the instant case, since the Board did not pass any order, it also in effect deprived the notices from exercising their right to appeal under Section 15 of the PIT Regulations;

- *The SCN blatantly violates the provisions of governing law(s) on the even subject. In as much as, undisputedly the Adjudicating Officer to adjudge the question as to levy of penalty under Section 15A (b) is to be appointed by a Whole Time Member and the order communicating the same can be signed by the Executive Director. In the present case, the appointment of the Adjudicating Officer was initiated on 26.10.2016, whereas the Whole time Member ordered to the said effect vide his order 27.10.2018. However in the present case the Whole Time Member never formed an opinion that there were grounds for adjudging penalty under Section 15A (b) of the Act; and the Whole Time Member did not pass an order under Regulation 14 of the PIT Regulations before taking any step for appointing an Adjudicating Officer for adjudicating any penalty under Section 15A (b) of the Act.*
- *In wake of Regulation 4A of the PIT Regulation it was mandatory Board (or its delegate) to make the necessary inquiries for forming a, prima facie, opinion ant to further follow the procedure under Chapter III of the PIT Regulation. Under Regulation 4A(1) of the Regulation the Board was within its mandate and duly empowered to make inquiries in the instant case on the suspicion that the notices had violated the provisions of the PIT Regulation in order to from a prima facie opinion as to whether there is any such violation. In terms of Regulation 4A (2) and 5, respectively, of the PIT Regulation, the Board is also empowered to appoint one or more officers to inspect the books and records of notice no.1, or any other person as referred to in Regulation 11(2) (i) of the Act qua ascertaining the allegations, as leveled in the SCN, which exercise was however never initiated by the SEBI.*
- *Further, Regulation 6 and 7 of the PIT Regulations categorically provide for the procedure for investigation, and Regulation 8 of the PIT Regulation mandates that the investigating authority would submit a report to the Board. However, in the present case no such exercise was ever carried out by SEBI.*

- *Also, Regulation 9(1) of the PIT Regulation mandates that the board would consider the investigation report and communicate the findings therefrom for the person suspected to be involved qua violation of these provisions. Palpably in the present case there is no such investigation report, much less any communication thereof. Consequentially the notices have been deprived of their lawful rights to submit their defence/objections/explanation thereto, in terms of Regulation 9(2) of the PIT Regulations. Besides, Regulation 10 of the PIT Regulation provides for appointment of an auditor to look into and probe the accounts of the alleged violator, evidently no such initiative was carried out by SEBI prior to issuance of SCN under response.*
- *Hence, it can be very well quipped that the formation of 'opinion' by the Board to the effect that there are grounds for adjudging under any of the provisions of the SEBI Act is a precondition for appointment of an Adjudicating Officer. Accordingly, it follows that in absence of such an opinion, an Adjudicating Officer cannot be appointed and any such appointment would be without jurisdiction.*
- *Evidently, while commencing with the even proceedings against the notices, SEBI never adhered to the above elaborated guidelines, as provided in the SEBI Act, and/or any other statute governing the even subject.*

15. Due to administrative reasons, more than six-month time was elapsed from the date of last opportunity of hearing granted to the Noticees. Thus, in view of principles of Natural Justice, another opportunity of hearing was granted to the Noticees vide HN dated January 02, 2020, wherein Noticees were advised to attend the hearing on January 23, 2020. The hearing notices were issued to the last known addresses of the Noticees.

16. Thereafter, AR of the Noticees appeared on behalf of all the Noticees and reiterated their earlier submissions available on record on behalf of all the Noticees. The AR sought additional time to file additional written submissions in the matter latest by February 18, 2020. However, no reply was received from the Noticees.

17. Due to ongoing Covid-19 situation since reasonable time had elapsed from the last date of hearing, one last opportunity of hearing was given to the Noticees in terms of Rule 7(d) of the Adjudication Rules,

wherein the notice was published in Delhi edition of Times of India (English) and U.P edition of Amar Ujala (Hindi) on September 21, 2020. Vide aforesaid notice, the Noticees were advised to attend the hearing on October 15, 2020.

18. Subsequently, Noticee no. 2 on behalf of himself and Noticee no. 1, vide email dated September 29, 2020, sought for extension of hearing due to covid-19 situation. Since, ample opportunities of hearing were already given to the Noticees under current proceedings, therefore, the Noticee 1 & 2 vide email dated September 30, 2020, were advised to avail the opportunity of hearing either through webex facility or through vedio conferencing facility from NRO office of SEBI in New Delhi on October 15, 2020. The Noticees were clearly informed that this is the last opportunity of hearing granted under current proceedings, failing which no further hearing shall be granted in the matter and that the matter shall be proceeded further on the basis of material available on record.

19. Thereafter, on the scheduled date of hearing, the AR of the Noticees reiterated earlier submissions already present on record on behalf of all the Noticees and made few fresh oral submissions. The same is summarized below;

- *The company is not running any CIS scheme. The company is running genuine real estate business. The Company owns the land, it develops and sells them on installment basis to its customers. Its business includes buying and selling of land; creating housing plots and selling them to the retail buyers; buying agricultural land and selling the housing plots after converting it to non-agricultural land; buying land and developing the residential complexes and selling the individual residential units to retail buyers; undertakes development of the plots of land so sold, if desired by the buyers. Buying and selling of land squarely falls under the jurisdiction of State. The company has complied with all the relevant laws with regard to a real estate business and submitting all necessary information to the state government.*
- *The company first acquires the land and then plots are created as per theme asurement to enable small/ middle income group buyers to acquire the same. The payments are made by the buyers for buying an existing piece of land already owned by the company. The payments received from the buyers were not used for acquiring the land, since the company owns land already. Once the interested buyer pays the money, the company immediately allots the property as per availability and preference and necessary registration letter is also given with necessary details like plot number, khasra number etc. to identify the property.*

- *All the agreements of the ongoing "projects" are under Single Investment Schemes and the sale deeds will be executed only at the time of possession. It had not made any agreement with any of its customers on multiple investment schemes. No consideration is received from any investor. What is received is only the advance consideration in installments from the buyers for the land. The company has received part consideration from 2,388 investors under various "projects" to the tune of Rs.15,64,86,244 as on 31/03/2013.*
- *The development activities of the company includes cultivation, plantation, cropping, saplings, fertilizers and other maintenance task and marketing of produce thereof during the tenure of its engagement. The development of the plot is at the option of the buyer. The consideration for the same would be completely different and in addition to what was agreed to be paid for the cost of land. The property is not managed by the company, the property is transferred to the purchasers and the purchaser has various commercially viable options. The purchaser of the land has full control over the property subject to the fulfillment of payment of full consideration. Even if the property is managed by the company, it is not from the funds raised from the buyers.*
- *Non execution of the sale deed is of no relevance in a real estate transaction of this nature. The sale will be completed after completion of the formalities with various authorities and within the time as mutually agreed upon. The company in the plot buyer agreement has inserted a default clause which is customary in any real estate agreement. Such clauses are incorporated in the agreement, as the individuals will have the advantage of monetised and liquidated money return instead of long process of filing suit for specific performance. There was no creation of profits or returns by the Company. What was paid to the purchaser in case of frustration of agreement is the penal interest as agreed.*
- *If SEBI is still of the opinion that any activity of the Company constitutes CIS, the Company will ensure that all the funds received from the purchaser are repaid and plans will be wound up, in accordance with law, within a reasonable time.*

20. It is further observed that there were parallel proceedings initiated under Section 11B of the SEBI Act, 1992 against the Noticees for the similar cause of action, which was concluded vide SEBI order dated February 28, 2019. Under 11B proceedings, Noticees had filed their written submissions, which were similar to the verbal submissions made by AR of the Noticees under current proceedings, as mentioned above. Since the cause of action of these proceedings are similar to the one initiated under section 11B

proceedings, submissions of the Noticees made under 11B proceedings are also being considered for the purpose of current proceedings.

CONSIDERATION OF ISSUES

21. I have taken into consideration the facts and circumstances of the case and the material available on record. Issues that arise for consideration in the present case are:

a) Whether the Noticees have violated the provisions of section 12(1B) of SEBI Act, 1992, Regulation 3 of SEBI (CIS) Regulations, 1999 and Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?

b) Does the violation, if any, attract monetary penalty under Section 15D(a) and 15HA of the SEBI Act?

c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

22. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act, 1992 and SEBI (CIS) Regulations, 1999 and SEBI (PFUTP) Regulations, 2003 which read as under:

Section 12(1B) of the SEBI Act, 1992:

"12(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....."

Section 11 AA of the SEBI Act 1992:

"11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (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 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 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."

CIS Regulations, 1999:

"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."

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:—

(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."

FINDINGS

23. Before getting into merits of the case, I would first deal with the preliminary objections raised by the Noticee no. 1 & 2 in their submissions. Noticees have submitted that "*the appointment of the Adjudicating Officer is without jurisdiction…."*

"……..the proceedings initiated against the Noticees are without jurisdiction and contrary to the law."

24. It is noted that the Noticee no. 2 had raised similar contention vide his letter dated March 23, 2018, on the basis of which Noticee no. 2, relying on findings of the Hon'ble High Court of Delhi in the matter of Amit Jain vs. SEBI decided on July 09, 2018, requested to keep the current proceedings in abeyance. In this regard, it is observed that a Division Bench of the High Court of Delhi vide its order dated July

31, 2018 in the aforementioned case had stayed the aforesaid judgment of the single judge, noting that "*It is stated that the ratio of the decision, if applied to other cases, would have grave, opprobrious and opalescent effect and consequences. Matter requires detailed consideration and examination and till then status quo should be maintained. Operation of the impugned judgment would remain stayed till the next date of hearing."*

25. It is further observed that the language and wordings of the contentions raised by the Noticees made vide their submissions dated September 20, 2018, is nothing but a replica of findings recorded in the aforesaid judgement of Amit Jain case by Hon'ble High Court of Delhi. It is further noted that the Noticee no. 2 without any application of mind has plainly copied the text and observations documented by the Hon'ble High Court in its aforesaid order. It is a matter of record that Noticees have raised objections on initiation of current proceedings making a reference to the procedural aspects of SEBI PIT Regulations, 1992 in his submissions, which is nowhere the cause of action under current proceedings.

26. On perusal of interim order, final order passed in the matter and terms of reference of appointment of undersigned under current proceedings, it is observed that the cause of action and alleged violations under the current proceedings squarely fall within the scope and provisions of Collective Investment Scheme as stipulated under SEBI Act 1992 and SEBI CIS Regulations, 1999 and does not pertain to violations of SEBI PIT regulations. Therefore, contentions and objections of the Noticees are baseless and vague. Thus, cannot be considered under current proceedings.

27. It is observed that the Noticees no. 1 & 2 have made Aa submission that "…..*The company is running genuine real estate business."*
"The company has complied with all the relevant laws with regard to a real estate business and submitting all necessary information to the state government…."

28. In this regard, it is noted that the plot buyers' agreement, submitted by Noticees under current proceedings, if considered as an agreement to sell, cannot be considered as a piece of admissible evidence, in view of U. P. Civil Laws (Reforms and Amendment) Act, 1976, w.e.f. January 1, 1977, which mandates that even an agreement to sell has to be registered in state of Uttar Pradesh.

29. Section 17 of the Registration Act, 1908, specified the documents, whose registration is compulsory. Under clause (b) of sub-section (1) thereof, other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, are included. A sale deed purporting to convey right and title in the property undoubtedly falls in this category of instruments. Thus, by virtue of Section 17 of the Registration Act, a sale deed has to be necessarily registered to be an admissible evidence in the eye of law.

30. Here, reference may also be drawn towards the judgment of the Hon'ble High court of Madhya Pradesh in Kailash v Babulal (decided on January 23, 2018), which lays down that the unregistered agreement to sell cannot be considered as a piece of evidence. Therefore, even assuming that identified plot is agreed to be sold through plot buyer agreement the same cannot be accepted as a valid piece of evidence for agreement to sell. Therefore, those documents do not exist in the eye of law for the purpose of proving the "agreement to sell". Rather, these demonstrate the features of the collective investment scheme and can be considered as one of the scheme documents.

31. Noticees in their submissions, have mentioned that "*the Board was required to undertake an investigation in case of any suspicion with respect to any violation as alleged in this case. Further in such a case the board is required to communicate the findings of the investigation and to provide an opportunity to the concerned person to respond/rebut to the said investigation. However, no such investigation was conducted by the Board."*

32. In this regard, on perusal of available records, it is observed that a detailed examination was conducted at the relevant time for the initiation of current proceedings, as per the procedure established by law and it was only after being satisfied that the Noticees were involved in illegal mobilisation of funds by means of collective investment schemes, current proceedings were initiated against the Noticees after following due procedure as established under SEBI Act. Thus, contention of the Noticees is baseless and can not be considered under current proceedings.

33. It is noted that Noticees have made a submission that "*The Show Cause Notice is based on totally unfounded, uncogent and/or unsubstantiated materials as it based its findings on mere conjectures and surmises."* In this regard, at the outset, it is noted that the impugned SCN was issued to the Noticees

based on principles of natural justice and due process established by law. The Noticees cannot merely make the allegations without producing adequate evidence in support of the charge. The Noticees alleging fraud are bound to establish it by cogent evidence and thus, mere suspicion cannot be accepted as proof. Thus, contention of the Noticees is baseless.

Issue No. 1: Whether the Noticees have violated the provisions of section 12(1B) of SEBI Act, 1992, Regulation 3 of SEBI (CIS) Regulations, 1999 and Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?

34. In order to deal with merits of the case, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees:
    a. The Company was offering Single Installment Plan and Multiple Instalment Scheme and collected Rs. 15,64,86,244/- as on March 31, 2013 from as many as 2,338 investors under its various schemes. The prospective buyers/investors who were interested in aforesaid 'Schemes' were made to execute a 'Plot Buyer(s)'s Agreement' with the Company without any identification of the plot or land. The 'Registration Letter' issued to an investor by the Company under its 'Multiple Installment Scheme' indicated an 'Assured Realisable cost' at the end of the term. Contribution was collected from the investors under the Schemes launched by the Company and the same was pooled and utilized for development of plots. The investments were made by the investors with a view to receive returns from the schemes. The property, contribution on investment forming part of the scheme/plans were managed by the Company on behalf of the investors and the investors did not have day to day control over the management of the Schemes/Plans.
    b. In terms of Section 12(1B) of the SEBI Act, "no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "CIS Regulations") also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, the launching/floating/sponsoring/causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. It was found that KREL had not obtained any certificate of registration

under the CIS Regulations for its fund mobilizing activity from the public under its schemes of land/plot. Thus, act of the Noticees was in violation of provisions of Section 11AA of the SEBI Act, 1992 and CIS Regulation, 1999.

c. Further, the mobilization of funds from the public, was found to be a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

35. I note that the aforementioned schemes offered by the Company have to be considered in light of Section 11AA(2) of the SEBI Act, 1992. The aforesaid Section 11AA(2) of the SEBI Act, 1992, stipulates certain conditions to determine whether a scheme or arrangement is a 'collective investment scheme' and the same should not fall within any of the exceptions mentioned in section 11AA(3) of SEBI Act. Thus, I proceed to consider now whether the four conditions mentioned in section 11AA(2) of SEBI Act are satisfied in the instant case. The conditions as stipulated vis-à-vis the facts of the case are discussed in succeeding paragraphs.

Condition no. 1: Whether the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

36. Regarding the first requirement of pooling of the contributions and utilization of the same for the scheme, Noticees have denied making any agreement with any of its customers on multiple investment schemes and that KREL received advance consideration in installments for selling the land already owned by it. However, on perusal of scheme documents, through which the Noticees were sponsoring their schemes, it is noted that the schemes of the Noticees only gave proposal to its prospective buyers/ investors to utilize the money contributed by the investors for the development of the land. It is further noted that the prospective buyers/investors who were interested in aforesaid 'schemes' were made to execute a 'Plot Buyer(s)'s Agreement' with KREL without any identification of the plot or land.

37. It is further noted that Noticees in support of their contention "*there was absolutely no pooling of funds in respect of impugned transactions since the business carried out by the Noticees was in the nature of casual and routine real estate business, as such the monies received was only 'sale considerations' from the investors"* have not submitted any evidence / documents such as stamp duty receipts, copy of

a sale deed duly registered with the competent authority etc. to substantiate their contention. Noticees have also not submitted any proof to establish that KREL was selling identified plots.

38. On perusal of buyer's representation of Plot Buyer Agreement, it is noted that the clause reads as "*the buyer agrees to the payment of sale price, government charges etc."* it further reads that "*the buyer has satisfied himself about the original layout plan of the plot*." However, no such copy of the layout plan or proof of payment of government charges (receipts) have been submitted by the Noticees under current proceedings.

39. Further, clause 6 of mutual representation of Plot Buyer Agreement, makes a reference to the sale deed, wherein original sale deed shall remain with KREL and the buyer / investor has an option to verify the original sale deed. However, on perusal of documents available on record, it has been noted that no sale deed has been executed by KREL. It is difficult to accept the fact that a company, which is running a real estate business from six years of its existence has not registered a single sale deed.

40. On perusal of submissions of the Noticee no, 1 and 2, it is noted that on one hand Noticee has submitted that "*All the agreements of the ongoing "projects" are under Single Investment Schemes and the sale deeds will be executed only at the time of possession."* And on other hand the Noticee has submitted that "*Non execution of the sale deed is of no relevance in a real estate transaction of this nature".* Thus, Noticee has itself made submissions, which are contradictory in nature and thus, are baseless.

41. According to Shorter Oxford Dictionary 6th edition "sponsor" means a person taking responsibility or standing surety for another; contribute to or bear the expenses of an event; support in a fund-raising activity by pledging money in advance. / Black's Law Dictionary 6th edition defines "sponsor" as a surety; one who makes a promise or gives security for another, particularly a godfather in baptism. In the civil law, one who intervenes for another voluntarily and without being requested.

42. On perusal of the plot buyer agreement, it is clear that the amounts were collected for the scheme by offering 'Single Instalment Scheme' and 'Multiple Instalment Scheme'. An investor who was desirous of investing in the said scheme had to execute an 'Application form cum Plot Buyer(s)'s Agreement' with KREL. After the execution of the same KREL issued a 'Registration Letter' in the favour of the

buyer/investor. It is immaterial whether the contribution by the investors are by way of lump sum payment or by way of installments.

43. On perusal of the 'Registration Letter' issued to one of the investors by KREL under its 'Multiple Installment Scheme', it is noted that contributions to the tune of `12000/- was collected from the investor for 60 sq. yards of plot under the 'Multiple Installment Scheme for 5 years'. On completion of the plan tenure the investors were entitled to receive an 'Assured Realizable cost'. As noted from Clause 4 of the General terms & conditions of the 'Plot Buyer(s) Agreement', KREL agreed *to arrange for the allotment and registration of plot in the name of the investor, within a reasonable period, not exceeding 180 days in case of Single Installment Plan and in cases of Multiple Installment Scheme, the allotment would be done within a reasonable period, generally not exceeding 365 days after receipt of 50% of the consideration.* Thus, from the above, it is clear that the money was collected by the KRELwith a promise to utilize the same for the development of the unidentified plots.

44. It is further noted that the property and contribution on investment forming part of the scheme/plans were managed by Noticee No. 1 on behalf of its investors and the investors did not have day to day control over the management of the Schemes/Plans. In light of above facts, it is clear that the contributions were collected from the investors under the Schemes launched by KREL which was pooled and utilized for development of plots. In view of the aforesaid it is evident that the instant Schemes/Plans of KREL satisfies the first condition stipulated in Section 11AA(2) of the SEBI Act.

Condition no. 2: 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.

45. As regards, the second requirement, that contributions/payments were made by the investors with a view to receive profits, income, produce or movable or immovable property from such scheme, observations has already been made earlier that the scheme document provided for development of the unidentified plots. The plot buyer agreement had the clause for development and the company made the representation to the buyer that the development was at the option of the investors. However, the

investor clearly expressed his intention through his representation in the plot buyer agreement by opting for the development of the plot by the company.

46. Clause 5 of the plot buyer agreement, reads that *the possession of the property remained with the Company for development/ cultivation during the tenure of agreement.*

47. The company had denied receiving any maintenance charge from the investors. However, on perusal of the "general terms and conditions" (clause 6) appended to the Plot buyers agreement as supplied by the company, it is noted that the agreement reads as *"the cost of the plot can include development charges and maintenance charges".* Therefore, even if no amount was separately charged as maintenance/development cost as claimed by the company, the same was included in the cost of the land as per the terms and conditions of the plot buyer agreement. If the plots were not meant to be developed, there does not stand to reason why should there be an agreement clause to that effect and there is no reason why the land is being held by the Company for such a long duration as was mentioned in clause 5 of the plot buyer agreement.

48. Clause 13 (A) of the 'Plot Buyer(s) Agreement' stipulates that in case "KREL commits Breach of agreement by not allotting land in favour of the investor, the buyer shall be entitled to terminate the Agreement, and in such event the investor shall be entitled to refund of the investment along with simple interest @ 15% per annum from the date of contract." In light of above, it is prima facie, observed that the investments are made by the applicants/investors with a view to receive returns from the schemes. Hence, I find that the instant scheme of KREL satisfies the second condition stipulated in section 11AA (2) of the SEBI Act.

49. As per section 11AA(2)(ii) in order to constitute a CIS scheme, the contributions to such scheme by the investors have to be made with a view to receive profits, income, produce or movable or immovable property from such scheme. In the instant case, there is also an allegation that the company agreed to provide immovable property in the form of developed plots. In view of the foregoing discussion, I find that in the instant scheme, contributions/payments were made by the investors also with a view to receive returns from such scheme. Therefore, the second requirement under section 11AA(2) of SEBI Act is also satisfied in the instant case.

Condition no. 3: The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and

Condition no. 4: The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

50. As regards the third requirement that the property, contribution or investment forming part of the scheme, whether identifiable or not, is managed on behalf of the investors, and the fourth requirement that the investors do not have the day to day control over the management and operation of the scheme. As discussed in preceding paras of this order, the development of the plot was not at the option of the investor as claimed by the company. In the Plot buyer agreement, it is noted that the company undertook development for all investors. The scheme rather provided for mandatory development by the company. This is further established by mere reading of clause 4 of mutual representation of the plot buyer Agreement, which reads as follows: -

"Development: KREL shall in conformity and in accordance with the opted scheme by the buyer(s) develop and maintain the Buyer(s) plot from the date of signing of this agreement in consultation with agro consultants and experts taking into consideration such factors such as soil, climate etc. All matters pertaining to development including survey, demarcation, clearing, cultivation, planning to development corps trees plants saplings etc. use of fertilizer and pesticides irrigation harvesting and all other activities allied or incidental thereof shall be finally decided by KREL"

51. The perusal of the above clause clearly shows that the management of the development activities were to be done by the company on behalf of the investors. The manner of the development activities to be done by the company also was "finally" decided by the company.

52. Further, On perusal of "instruction to the intending allottee" of the plot buyer Agreement, which reads as follows:-

" ….the agreement shall not be accepted by the buyer if the said agreement has not been executed by the buyer within 7 consecutive days following dispatch and handing over of the agreement…."

"…..the company will have an option to either accept or reject the agreement within 30 days after receiving it from the buyer….."

It has further been noted that the company had the final discretion in performance of the agreement and that the investor had absolutely no say in it.

53. It is noted from the Certificate and the Plot Buyer Agreement available on record that there is no mention of details/specification of land/plot to be allotted to the investor. In some of the Plot Buyer Agreement, name of the village is only mentioned. This clearly indicates that there is no certainty as to the investors will be allotted presently which plot of land upon maturity of the agreement term. Hence, I find that the instant arrangement/scheme satisfies the third and fourth conditions for CIS schemes as stipulated in section 11AA(2) of the SEBI Act.

54. It is further observed that the Noticee no. 1 & 2 in their submissions made under 11B proceedings have submitted that "*If SEBI is still of the opinion that any activity of the Company constitutes CIS, the Company will ensure that all the funds received from the purchaser are repaid and plans will be wound up, in accordance with law, within a reasonable time."* Thus, the above contention of the Noticees is clearly an acceptance that the schemes run my Noticees were nothing but Collective Investment Scheme within the definition of section 11AA(2) of the SEBI Act.

55. In view of the aforesaid, I am of the view that the schemes / plans run by the Noticees satisfy the pre-requisites laid down under Section 11AA(2) of the SEBI Act to be classified as a collective investment scheme.

56. Now that it is established that the schemes / plans of the Noticees are in the nature of a collective investment scheme, I hereby decide to examine if such collective investment schemes were sponsored and / or carried on by the Noticees in violation of Section 12(1B) of the SEBI Act & Regulation 3 of the CIS Regulations.

57. Section 12(1B) of the SEBI Act states that no person shall sponsor or cause to be sponsored or cause to be carried on a collective investment scheme unless a certificate of registration from SEBI is obtained in accordance with the regulations. Further, Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a collective investment scheme. From the material available on record, I note that the Noticee no. 1 is not registered with SEBI as Collective Investment Scheme. Since the Noticees did not obtain any certificate of registration for carrying on a collective investment scheme from SEBI in terms of Section 12(1B) of the SEBI Act & Regulation 3 of the CIS

Regulations, I am of the view that they had violated provisions of Section 12(1B) of the SEBI Act & Regulation 3 of the CIS Regulations.

58. Moving further, with respect of the allegation of violation of regulation 4(2) (t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (FUTP Regulations, 2003), it may be noted the PFUTP Regulations was amended with effect from Sept 06, 2013 and clause (t) to reg. 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."

59. Subsequent, to introduction of reg. 4(2) (t) of PFUTP Regulations, 2003., the illegal mobilisation of funds by means of collective investment schemes are deemed to be fraudulent. The company carrying on unregistered collective investment schemes and all those persons who are directors as on the date of introduction of reg. 4(2) (t) of PFUTP Regulations, 2003 will be liable for action, for violation of reg. 4(2) (t) of PFUTP Regulations, 2003. In the present case, I find that the fund mobilization continued subsequent to September 06, 2013, Therefore, the directors of KREL as on September 06, 2013 and the company have violated regulation 4(2) (t) of PFUTP Regulations.

60. Therefore, in light of the foregoing, KREL along with all its directors subsequent to September 06, 2013 (the Noticees) are jointly and severally liable for imposition of appropriate penalty for violation of section 12(1B) of SEBI Act, 1992, Regulation 3 of SEBI (CIS) Regulations, 1999 and Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003, as enumerated above.

Issue no. II: Does the violation, if any, attract monetary penalty under Section 15D(a) and 15HA of the SEBI Act?

61. In view of the foregoing, it is established that the Noticees were carrying on collective investment scheme without obtaining a certificate of registration from the Board in accordance with regulation and illegally mobilized funds by means of such collective investment schemes. Hence, I am of the view that

the Noticees had violated section 12(1B) read with Section 11AA of the SEBI Act, regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the SEBI (PFUTP) Regulations, 2003 and also keeping in view the facts and circumstance / undisputed fact, I am of the view that a monetary penalty needs to be imposed upon them under sections 15D(a) and 15HA of the SEBI Act which reads as follows:

Penalty for certain defaults in case of mutual funds.

15D. *If any person, who is—*

(a) *required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less;*

Penalty for fraudulent and unfair trade practices.

15HA*. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher]*

Issue No. III: If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act?

62. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under;

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

63. As per material available on record, the Noticees had mobilized a large sum of Rs. 15,64,86,244/- as on March 31, 2013 from as many as 2,338 investors under its various schemes. At this juncture, I find it relevant to refer to the judgment of Supreme Court of India in the matter of P.G.F. Limited & Ors. v. Union of India & Ors. (Civil Appeal No. 6572 of 2004 dated March 12, 2013 : MANU/SC/0247/2013) wherein, the court observed that, *"It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either inthe field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded."*

    It further observed that, *"we can also take judicial notice of the fact that those schemes, which would fall under Sub-section (2) of Section 11AA would consist of a marketing strategy adopted by those promoters, by reason of which, the common man who is eager to make an investment falls an easy prey by the sweet coated words and attractive persuasions of such marketing experts who ensure that those who succumb to such persuasions never care to examine the hidden pitfalls under the scheme, which are totally against the interests of the investors, apart from various other stipulations, which would ultimately deprive the investors of their entire entitlement, including their investments. The investors virtually by signing on the dotted lines of those stereotyped blank documents would never be aware of the nature of constraints created in the documents, which would virtually wipe out whatever investment made by them in course of time and ultimately having regard to the legal entangles in which such investors would have to undergo by spending further monies on litigations, ultimately prefer to ignore their investments cursing themselves of their fate. More than 90 per cent of such investors would rather prefer to forget such investments than making any attempt to secure their money back. Thereby, the promoters put to unlawful gain who always thrive on other peoples money."* Thus, I am of the view that the Noticees' act of carrying on an unregistered collective investment scheme was not only a violation of provisions of SEBI Act and regulations made thereunder, but it also put investments of a large number of investors in jeopardy.

64. The gravity of this matter cannot be ignored as non-compliance of the directions made vide SEBI order dated July 03, 2015, is continuing till date after lapse of more than 5 years. The brazen defiance shown by the Noticees towards directions cannot be viewed lightly. In my view, the non-compliance of directions in such cases is certainly a serious violation affecting the interest of investors. I am of the opinion that entities violating provisions of SEBI Act, CIS and PFUTP Regulations and the directions/orders of the Board (as enumerated above) seriously compromise the regulatory framework and are detrimental to the interests of the investors. Such violators should be suitably penalized so as to demonstrate the enforcement as effective deterrence in such cases as envisaged in legislative intent of sections 15D(a) and 15HA of the SEBI Act. Therefore, I am of the view that maximum penalty under sections 15D(a) and appropriate penalty under section 15HA of the SEBI Act upon the Noticees will be commensurate with their violations in this case.

65. I note from the material available on record that the Noticees were also called upon to provide the details of money refunded to the investors and/or money invested and/or if not refunded/invested, details as to where such amount is deposited/ held, out of the money so illegally mobilized in the schemes of Noticee no. 1, vide Hon'ble SAT order i.e. November 23, 2017. However, I note that vide SEBI order dated February 28, 2019, it was concluded that the Noticees had not provided any details of refund made to the investors as was directed vide SEBI order dated July 03, 2015 and SAT order dated November 23, 2017. Thus, it is concluded that the refund to 2,338 investors has not been made till date.

66. As there is no information available on record regarding the usage of the funds as mobilized under the collective investment schemes of the Noticee no.1, there cannot be any other option but to take the adverse inference that all the amounts so mobilized under the collective investment schemes is the unlawful gain to the Noticees.

67. In order to satisfy the factors enumerated under Section 15J and to decide the quantum of penalty to be imposed, I observe that the whole amount which has been illegally raised under the collective investment schemes without obtaining registration from SEBI is the amount that the Noticees have "accumulated" is the "profit" or "unlawful gain".

68. It is observed that although the said profit/unfair advantage has been gained by the Noticees at the cost of loss caused to the investors of the schemes of Noticee no.1. As regards repeated nature of the offence, it is an undisputed position that illegal mobilization of funds by the Noticees continued for a considerably long period. It suggests that the violation by the Noticees is repetitive in nature.

69. It has also been observed that the prosecution proceedings were initiated in the matter against KREL and its directors on November 19, 2015. It is also a matter of record that the recovery proceedings in the matter were initiated vide Recovery Certificate No. 2281 dated June 26, 2019.

ORDER

70. After taking into consideration all the aforesaid facts / circumstances of the case and factors enumerated in section 15J of the SEBI Act and loss to the investors, an appropriate penalty for violation of alleged provisions of section 12(1B) read with Section 11AA of the SEBI Act, regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the SEBI (PFUTP) Regulations, 2003, as mentioned in the table below, in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, under section 15D(a) and 15HA of the SEBI Act, is imposed upon Noticee No. 1 to 11;

Alleged Violations	Charging section
Section 12(1B) read with Section 11AA of the SEBI Act and Regulation 3 of the CIS Regulations	Section 15D(a) of the SEBI Act, 1992
Regulation 4(2)(t) of the SEBI (PFUTP) Regulations, 2003	Section 15HA of the SEBI Act, 1992

71. The Noticees will be jointly and severally liable to pay the penalty amount as mentioned in the table below;

Name of the Noticee	Penalty Amount (in Rs.)
Kalpbut Real Estate Limited (PAN: AADCK3482E)	
Bhanu Pratap Singh (PAN: AENPS9792L)	
Krishan Pal Singh(PAN: AMYPS0600G)	
Guddi Devi (AJXPD0444R)	

Rajendra Singh Thakur (PAN: ABUPT7761N)	1,05,00,000/- (One Crore Five Lakh Only)
Parvesh Kumar Singh (PAN: DEWPS4079J)	
Natthu Singh (PAN: DKBPS2620L)	
Raksha Pal Singh (PAN: BDSPS9886A)	
Devendra Pal Singh (PAN: BJVPS0029N)	
Rajeshwari Sengar (PAN: AVZPS2724H)	
Pooran Prakash (PAN: ALLPP2252K)	

72. Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action – III [EFD 1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1.	Case Name	
2.	Name of the Payee	
3.	Date of payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Details in which payment is made	
7.	Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

73. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

74. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

75. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

DATE: October 22, 2020 **VIJAYANT KUMAR VERMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**