

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**(ADJUDICATION ORDER NO: ORDER/GR/RR/2020-21/9762-9766)**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA  
ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND  
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

<b>Noticee No.</b>	<b>Name of the Entity</b>	<b>PAN/DIN</b>
1	Vinayak Homes and Real Estate Limited	AADCV4004B
2	Mr. Yogendra Bisay	AFQPB2353A
3	Mr. Jitendra Bisay	AFZPB2659A
4	Mr. Phool Chand Bisay	AIQPB4211L
5	Mr. Yuvraj Malakar	AKYPY9430C

**In the matter of Vinayak Homes and Real Estate Limited**

*(The aforesaid Noticees are hereinafter individually referred to as Noticee 1 to Noticee 5 and collectively referred to as "the Noticees")*

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), the alleged violations of Regulation 4(2)(t) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') by Vinayak Homes and Real Estate Limited (**VHREL/Noticee 1/the company**) and its directors namely Mr. Yogendra Bisay (**Noticee 2**), Mr. Jitendra Bisay (**Noticee 3**), Mr. Phool Chand Bisay (**Noticee 4**) and Mr. Yuvraj Malakar (**Noticee 5**) in the said matter.

### **APPOINTMENT OF ADJUDICATING OFFICER**

2. Vide Order dated June 26, 2019, the undersigned has been appointed as Adjudicating Officer in the instant matter to inquire into and adjudge the matter for the aforesaid alleged violations by the Noticees.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice dated August 27, 2020 (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on Noticees under the provisions of Sections 15HA of the SEBI Act, for the alleged violation of Regulation 4(2)(t) of PFUTP Regulations. The hard copy of the SCN could not be delivered to the Noticees at their last known address available on record. Subsequently, email id of the Noticee 2, 3 and 4 were obtained from BSE and email id of the Noticee 1 was obtained from MCA website. Thereafter, said SCN was served upon the Noticee 1 to 4 through their email id. With respect to the Noticee 5, as the SCN could not be served at the address of the Noticee, an attempt was made to affix the SCN at the available address of the Noticee 5. However, the same could not be affixed as no such address was found. Thereafter, the SCN was served through publication dated November 28, 2020 in Times of India and Dainik Bhaskar (Indore edition).

4. The fact of the case and the allegations made in the SCN are summarised below:

- a) SEBI received a letter dated July 10, 2015 from Police Station-in-Charge, Champa, Dist-Champa Janjgir, Chhatisgarh, informing about the registration of an FIR against VHREL 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.
- b) In order to ascertain whether VHREL was involved in any fund raising activity by running schemes in the nature of 'Collective investment Schemes' in terms of Section 11AA of the SEBI Act, letters dated April 06,

2016 were issued to the company and its directors, namely Phool Chand Bisay, Jitendra Bisay and Yuvraj, seeking the following information and documents:

- i. Memorandum and Articles of Association of the company.
  - ii. Details of past and present directors of the company.
  - iii. Brochures pertaining to the company's schemes / offers issued to the public.
  - iv. Copies of application forms for participation in the scheme by investors
  - v. Sample copies of certificates, registration letter and allotment letter issued to investors.
  - vi. Sample copies of agreement letter / contract under the scheme.
  - vii. Details of the scheme wise amount mobilized till date, along with the number of investors under the scheme, in prescribed format.
  - viii. Certified copies of audited financial statements for FYs 2010-11 to 2014-15.
  - ix. Income Tax returns of the company for last three years.
  - x. Details of any other similar scheme(s), if any, floated by the company or its group / associate company.
  - xi. List of properties acquired by the company with the funds mobilized under the scheme, in the prescribed format.
- c) With regard to above, subsequent reminder letters were sent by SEBI to the Company and its present and past directors, however, no response was received from the company and its directors.
- d) In the absence of any information from the company and its directors, SEBI issued letters dated December 13, 2016 to the Janjgir Champa Police Station, the auditor of the company as well as to one of the complainants, seeking various documents pertaining to fund mobilization activities of the company. A reminder letter dated July 25, 2017 was also sent to the auditor. However, no response was received from the Auditor.

- e) From the documents provided by the Officer-in-Charge, Janjgir Champa Police Station, following was observed –
- i. From the copy of Application Form issued by the company, it was observed that the Application Form pertains to a scheme for purchase of plots and development of the same under ‘Cash Down Payment Plan’ or ‘Installment Payment Plan’. The same contains the following opening line: “*I hereby apply to you for purchase of plot (s) and development and maintenance of the same under your Cash Down Payment Plan/Installment Payment Plan as per details given below.*”
  - ii. The Application Form *inter alia* mentions the following:
    - Plan No.
    - Name of Plan
    - No. of Plot (s)
    - Area (Sq.Yds.)
    - Term (Years)
    - Total Consideration (First Instalment)(Rs.)
    - Expiry Date of Agreement
  - iii. The Application Form mentions *inter alia* the following clause under ‘General Terms and Conditions’: 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.
  - iv. From the copy of sample ‘Agreement’ as contained in the Application Form, following was observed:
    - That VHREL is engaged in the business of real estate and development and maintenance of agricultural land at various places.
    - That VHREL organises the sale of agricultural land of different sizes to prospective buyers and undertakes the development and maintenance of the same.

- 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.
  - 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 sample 'Agreement' mentions *inter alia* the following clauses:
- 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 50% of the consideration in case of Instalment Payment Plans, as provided in the Application Form.
  - 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. The right, title and interest of the customer to the land shall remain inviolate, subject to the reciprocal rights and obligations of the customer and the company.
  - 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.
  - The customer shall be the owner in possession of the land at all times.
- vi. 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.
- vii. It is further noted that the company has issued certificates titled as 'Registration Letter' to the applicants which inter alia states 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* the following details:
- Name & Address of the person
  - Registration no. and date of commencement
  - Plan No. & Term
  - Agreed Cost of Product
  - Period of Time
  - Mode of Payment
  - Expected Cost of Product at End of Term
  - Amount of Instalment
  - Date of Last Instalment
  - Date of Expiry of Term
  - Instalment Due Date
  - Expected Sum Payable
  - Distributor's Code
  - Receipt No. and date

- viii. The copy of certificate also has 'First Payment Receipt' attached to it.
- ix. It is noted that the abovementioned certificate issued to the investors, which is titled as 'Registration 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 appears to be the return on investment payable to the investor at the end of the term.
- x. From the copies of documents titled as 'Plan Book' issued by the Company and other similar documents, it was observed that the same contains inter alia the following Tables:

**TABLE 1**  
**(Special Mansoon Offer 6 & ½ year)**

<b>Amount</b>	<b>MIS-12</b>	<b>RIP-7</b>	<b>Maturity</b>
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
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
887750	652500	215250	2521500
917000	689500	227500	2665000
973500	732000	241500	2829000
1022750	769000	253750	2972500

**Sample Tables under RIP, LLP & MIS Plans  
TABLE 2**

**RIP-7 (6.6 year)**

<b>MLY</b>	<b>QLY</b>	<b>HYL</b>	<b>YIY</b>	<b>Cost of Unit</b>	<b>Cost of PC Unit</b>	<b>ADC Risk*</b>
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)**

<b>MLY</b>	<b>QLY</b>	<b>HYL</b>	<b>YIY</b>	<b>Cost of Unit</b>	<b>Cost of PC Unit</b>	<b>ADC Risk</b>
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	88500	17550	34500	180000	258000	100000
4000	11800	23400	46000	240000	344000	100000
5000	14750	29250	57500	300000	430000	100000

**TABLE 4**

**LLP-15 (12 year)**

<b>Amount of Consideration</b>	<b>Payable Amount</b>	<b>ADC Risk Cover</b>
5000	20000	5000
10000	40000	10000
15000	60000	15000
20000	80000	20000
25000	100000	25000
30000	120000	30000
35000	140000	35000



40000	160000	40000
45000	180000	45000
50000	200000	50000

**TABLE 5**

**MIS-12 (6 year)**

<b>Amount of Consideration</b>	<b>Payable Every Year</b>	<b>ADC Risk Cover</b>
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)**

<b>Amount of Consideration</b>	<b>Payable Every Year</b>	<b>ADC Risk Cover</b>
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

- xi. 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 been 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.

- xii. From the details contained in the Application Form, the sample Agreement and the copies of certificates (titled as 'Registration Letters') issued by the company to the investors and the abovementioned Tables pertaining to the plans/schemes 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 under various plans under its 'Schemes' referred to as scheme for purchase, development and maintenance of plot(s) of land. The various plans offered under the 'Scheme' provided the options 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. 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 (which appear to be Monthly Income Scheme Plan and Lump-sum Payment / Cash Down Payment Plan where the money apparently has to be invested as lump-sum amount outright) refer to 'Payable Every Year' / 'Payable Every Month' and 'Payable Amount' which appear to be the yearly/ monthly/ lump-sum returns being offered to the investors on the invested amount. None of the certificates contain any reference to allotment / sale of plots of land.

- xiii. It is noted that while SEBI has received a large number of complaints against the company from investors, all such complaints 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.
- xiv. It is noted that though the 'Application Form' issued by the company is purportedly meant for a scheme for purchase, development and maintenance of agricultural plots of land, it prima facie appears that the company has used the said scheme merely as a money mobilization scheme offering returns to the investors on the invested amount.
- f) Various documents including financial statements filed by the company with Registrar of Companies were accessed and it was observed from the balance sheet of the company that the company had a current liability of Rs.1,30,35,000/- (as on March 31, 2012), Rs.3,37,69,937/- (as on March 31, 2013), Rs. 4,27,29,937/- (as on March 31, 2014), Rs.2,17,36,248/- (as on March 31, 2015), on account of 'Advance Against Land Booking'. Further, the copies of Certificates issued by the company pertain to FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 indicating fund mobilization by the company during all these FYs.
- g) From the above, it prima facie appeared that the company has mobilized huge funds from public under its scheme pertaining to purchase, development and maintenance of plot(s) of land.
- h) Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 prohibits mobilisation 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. It was however observed that the company had mobilised funds even after the said Regulation came into effect.

- i) In view of the above, it was alleged that VHREL was engaged in the fund mobilizing activity of the company through the 'Scheme' pertaining to purchase, development and maintenance of plot(s) of land and therefore, violated Regulation 4(2)(t) of the SEBI PFUTP Regulations.
5. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules the Noticees were granted an opportunity of personal hearing through webex platform on October 12, 2020. The said hearing was granted through videoconferencing on the Webex platform in view of the difficulties faced due to Covid 19-pandemic. It was observed that the said hearing notices were duly served upon at the email id of the Noticee 1 to 4, however, they did not avail the opportunity of personal hearing on October 12, 2020. With respect to the Noticee 5, as the hearing notice could not be delivered at his address available on record, an attempt was made to affix the hearing Notice at the available address of the Noticee 5 providing him another opportunity of personal hearing on October 27, 2020 through videoconferencing on the Webex platform. However, the said hearing Notice also could not be affixed as no such address was found. Thereafter, the hearing Notice was served through publication dated November 28, 2020 in Times of India and Dainik Bhaskar (Indore edition) providing Noticee 5 another opportunity of hearing on December 7, 2020. However, Noticee 5 neither replied nor availed the opportunity of personal hearing on December 7, 2020.
6. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCNs and hearing Notices were duly served upon the Noticees and sufficient opportunities were provided to the Noticees to reply to the SCN and appear for hearing.
7. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. In the facts and circumstances of this case, I am of the view that the Noticees have nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 the matter can be proceeded ex-

parte on the basis of material available on record. In the absence of any response from the Noticees to the SCN, I presume that the Noticees have admitted the charges levelled against them.

In this regard, it is pertinent to note that 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"*.

Further, 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, and observed that: *"..... 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 leveled against them in the show cause notices.."*

Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

*"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

8. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticees ex-parte, based on the material available on record.

**CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have violated Regulation 4(2)(t) of PFUTP Regulations.

After perusal of the material available on record, I have the following issues for consideration, viz.

- I. *Whether Noticees have violated Regulation 4(2)(t) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?*
- II. *Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act, 1992 for the Noticees?*
- III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

10. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

**SEBI (PFUTP) Regulations, 2003**

*4. Prohibition of manipulative, fraudulent and unfair trade practices*

*(2) Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [any of the following]:—*

*(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.*

***Issue I: Whether Noticees have violated Regulation 4(2)(t) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?***

11. I have perused the facts of the case, gist of allegations made against the Noticees, documents available on record and my findings thereof are specified below:

- a) From the facts of the case and material available on record, I find that VHREL was involved in fund raising activity through various schemes pertaining to purchase, development and maintenance of plots of land.
- b) From the Application Form issued by the company, it was observed that the Application Form pertains to a scheme for purchase of plots and development of the same under 'Cash Down Payment Plan' or 'Installment Payment Plan'.
- c) Under 'General Terms and Conditions', the Application Form mentions *inter alia* that 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.
- d) The sample agreement issued by Company provides that the customers 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 50% of the consideration in case of Instalment Payment Plans, as provided in the Application Form. Further, 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.

- e) The sample agreement further states 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.
- f) The company had 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'. It was observed that certificate/registration 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 appears to be the return on investment payable to the investor at the end of the term.
- g) From the Application Form, the sample Agreement and the copies of certificates/Registration Letters issued by the company to the investors it was observed that the company had collected funds from the public during the FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 under various plans under its 'Schemes' referred to as scheme for purchase, development and maintenance of plot(s) of land. The various plans



offered under the 'Scheme' provided the options of investing money in monthly/quarterly/half-yearly/yearly installments or as lump-sum payment.

- h) It was observed from the balance sheet of the company filed with the Registrar of Company that the company had a current liability of Rs.1,30,35,000/-(as on March 31, 2012), Rs.3,37,69,937/-(as on March 31, 2013), Rs. 4,27,29,937/- (as on March 31, 2014), Rs.2,17,36,248/- (as on March 31, 2015), on account of 'Advance Against Land Booking'. Further, the copies of Certificates issued by the company pertaining to FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 indicates fund mobilization by the company during all these FYs.
- i) I find that the Company had mobilized funds from public under its schemes pertaining to purchase, development and maintenance of plots of land.
- j) In view of the above findings, the 'Schemes' offered by the Company needs to be considered in light of Section 11AA of the SEBI Act, 1992 which provided various conditions to determine whether a scheme or arrangement is a Collective Investment Scheme. Said conditions are mentioned below:

*“( 1 ) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or subsection (2A) shall be a collective investment scheme.*

*Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.*

*(2) Any scheme or arrangement made or offered by any person under which,*

*(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*

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

*(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*

*(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.”*

k) In view of the aforesaid conditions, schemes offered by VHREL are examined as under:

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

From the copies of Certificates issued by the company it is observed that the company has collected funds from general public under various plans under its Schemes which pertain to purchase, development and maintenance of plot(s) of land. The amounts have been collected in instalments or as lump-sum amount. Under the said schemes, the company had 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.

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.

Further, from balance sheets of the company filed with RoC, it is observed that the company had mobilized a sum of Rs.4,27,29,937/- as on March 31, 2014 and Rs.2,17,36,248/- as on March 31, 2015, as advance against land booking.

Therefore, I find that the contributions/payments made by the investors were pooled and utilized for the purposes of the 'Scheme' and not for the purchase of an identified plot of land. 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. I, therefore, find that the instant 'scheme' satisfies the first condition stipulated in Section 11AA(2) of the SEBI Act.

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

From the certificates issued by the company as well as the Tables pertaining to various plans offered by the company, it was observed that the investors had invested money in the scheme to get a return on their investment. Under the said scheme, the company 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.

From the certificates issued by the company in respect of the investments made under instalment plans (RIP Plans), it is observed that the same 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 (which appear to be Monthly Income Scheme Plan and Lump-sum Payment / Cash Down Payment Plan where the money apparently has to be invested as lump-sum amount outright) refer to 'Payable Every Year' / 'Payable Every Month' and 'Payable Amount' which appear to be the yearly/ monthly / lump-sum returns being offered to the investors on the invested amount.

In light of above, it is prima facie, observed that the contribution/ investment is made by the investors in the scheme with a view to receive a return or earn profit. Therefore, in my opinion the schemes offered by VHREL satisfies the second condition stipulated in section 11AA (2) of the SEBI Act.

- iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and*
- iv. The investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

The Agreement forming the part of the Application Form relating to the scheme of purchase, development and maintenance of plot(s) of land contained *inter alia* the following clauses:

- 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. The right, title and interest of the customer to the land shall remain inviolate, subject to the reciprocal rights and obligations of the customer and the company.
- 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.

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.

In view of the above, I am of the view that the scheme offered by VHREL satisfies the third and fourth conditions stipulated in Section 11AA(2) of the SEBI Act.

- l) The aforesaid findings on schemes offered by VHREL, prima facie, satisfies all the four conditions specified in Section 11AA(2) of the SEBI Act. Therefore, in my opinion, VHREL is engaged in fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.
- m) In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of PGF Limited Vs. Union of India (MANU/SC/0247/2013) that *"...sub-section (2) of Section 11AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result therefrom."*
- n) I observe that VHREL was engaged in fund raising activity from public through various schemes pertaining to purchase, development and maintenance of plots of land. Further, VHREL was running such collective investment scheme without obtaining regulatory approvals.
- o) I find that the fund mobilizing activity of the company through the 'Scheme' pertaining to purchase, development and maintenance of plot(s) of land post September 2013 prima facie amounts to a fraudulent

practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

- p) From the material available on record, I find that the Noticee 2 to 5 were the Directors of VHREL during the period of fund mobilisation by the Company. With respect to the said Directors, following was observed from the MCA21 portal:

Sr. No.	Name of Director	Date of Appointment	Date of Cessation
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	Yuvraj Malakar	July 13, 2015	February 09, 2019

I find that Jitendra Bisay and Yogendra Bisay in their capacity as directors of VHREL, 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, in my opinion, Jitendra Bisay and Yogendra Bisay, in their capacity as directors of VHREL were responsible for the affairs of the Company including fund mobilization carried out by Company under various schemes.

From the MCA website, I observe that Phool Chand Bisay is an independent director of VHREL and has signed the financial statements for the year 2014-15 and 2015-16. Therefore, in my opinion, Phool Chand Bisay, in his capacity as director of VHREL was fully aware of the fund mobilization being carried out under various schemes.

I observe that Yuvraj Malakar was appointed as director of VHREL on July 13, 2015. From the balance sheet of the company filed with RoC, it is observed that the company had a current liability of Rs. 1,91,75,687/- as on March 31, 2016 on account of 'Advance Against Land Booking'. Therefore, it's clear that Yuvraj Malakar was holding directorship of the Company during the period of fund mobilisation.

- q) Based on the aforesaid findings, I conclude that Noticees were engaged in illegal fund mobilisation and thereby have violated Regulation 4(2)(t) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

***Issue II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act, 1992 for the Noticees?***

The provisions of Section 15HA of the SEBI Act, 1992 read as under:

*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.*

12. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15HA of SEBI Act for violation of Regulation 4(2)(t) of PFUTP Regulations.

***Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?***



13. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.
14. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticees. However, it's on record that the company had a current liability of Rs.1,30,35,000/- (as on March 31, 2012), Rs.3,37,69,937/- (as on March 31, 2013), Rs. 4,27,29,937/- (as on March 31, 2014), Rs.2,17,36,248/- (as on March 31, 2015), on account of 'Advance Against Land Booking'. In addition, copies of Certificates issued by the company indicated towards fund mobilization from public under its scheme pertaining to purchase, development and maintenance of plot(s) of land during FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. In the present matter, I note that Noticees have violated Regulation 4(2)(t) of PFUTP Regulations.

### **ORDER**

15. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material available on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose a penalty of Rs. 60,00,000/- (Rupees Sixty Lakh Only) jointly and severally on Vinayak Homes and Real Estate Limited and its directors namely Mr. Yogendra Bisay, Mr. Jitendra Bisay, Mr. Phool Chand Bisay and Mr. Yuvraj Malakar under the provisions of Section 15HA of the SEBI

Act for violation of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the violation committed by the Noticees.

16. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

17. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

1. Case Name:	
2. Name of 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	

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

19. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: December 8, 2020**

**Place: Mumbai**

**G RAMAR**

**ADJUDICATING OFFICER**