

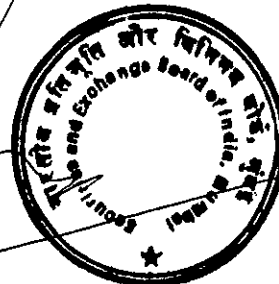
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in respect of M/s KMJ Land Developers India Ltd. (PAN:AADCK4402G) and its Directors viz. Mr. Santoshi Lal Rathore, (PAN:AEXPR6319A), Ms. Kanchan Rajawat Kushwah (PAN: AKLPR9493H), Ms. Nirmala Rathore (PAN: AEUPR2841G), Mr. Gopal Prasad Gupta, Mr. Dilip Jain, Mr. Sunil Singh, Mrs. Mathura Bai and Mr. Sunil Singh Kushwah.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a letter dated September 21, 2012 from the Department of Financial Services, Ministry of Finance enclosing an Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of *Dharmvir Singh and Anr. Vs. Union of India & Ors.* [Writ petition No. 3332 of 2010 (PIL)]. From the aforesaid order, it was observed that –

- i. The Petitioners therein had filed a Public Interest Litigation (hereinafter referred to as "PIL") against various companies including M/s KMJ Land Developers India Ltd. (hereinafter referred to as "KMJ Developers"), alleging that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by these companies, under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest from 15%-20%.
- ii. The Hon'ble High Court vide order dated July 5, 2011, directed the Central Bureau of Investigation (hereinafter referred to as "CBI") to, conduct the preliminary investigation regarding the activities of such companies and file a Status Report. As per the aforesaid directions of the Hon'ble Court, CBI filed its final "Status Report" before the Hon'ble Court on January 13, 2012.
- iii. The Hon'ble Court, vide the said Order dated July 13, 2012, inter alia directed that copy of the said Order be forwarded to the various authorities including SEBI to take appropriate action in accordance with law.

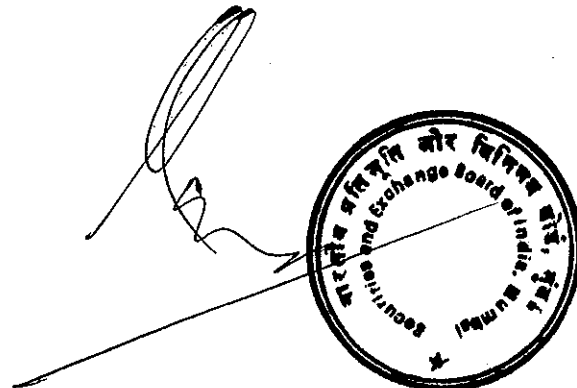


iv. *The Hon'ble High Court, also advised the authorities to consider the aforesaid Report filed by CBI in respect of the activities of the companies including KMJ Developers.*

2. As a matter of preliminary enquiry into the alleged mobilization of funds by KMJ Developers, SEBI, vide letter dated November 22, 2012, *inter alia* sought the following information in relation to its business activities:

- i. Memorandum and articles of Association (MoA and AoA) of KMJ Developers as filed with the Registrar of Companies (RoC);
- ii. Details of the past and present directors of KMJ Developers including name, address, PAN and contact details (Email/fax/contact no);
- iii. Brochures pertaining to the schemes/plans which were made available to the public by KMJ Developers;
- iv. Copies of application forms that are required to be submitted by investors to participate in the schemes;
- v. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes;
- vi. Sample copies of the agreement letter/contract required to be entered into by investor under the schemes;
- vii. Details of the scheme- wise amount mobilized by KMJ Developers till date alongwith the number of investors under the schemes;
- viii. Certified copy of audited financial statements for the FYs 2009-10, 2010-11 and 2011-12;
- ix. Copy of income tax return filed by KMJ Developers for the last three years;
- x. Details of any other similar scheme(s), if any, floated by the company or its group /associates companies.

2.1 The aforesaid letter was, however returned undelivered. Thereafter, SEBI issued another letter dated July 23, 2013 to KMJ Developers & its directors (past & present). KMJ Developers, vide its reply dated September 04, 2013 (submitted through an Advocate, Mr. Arvind Kumar Dwivedi) informed that their registered office had been sealed by the Gwalior Administration, vide Order dated May 04, 2011 and their entire records

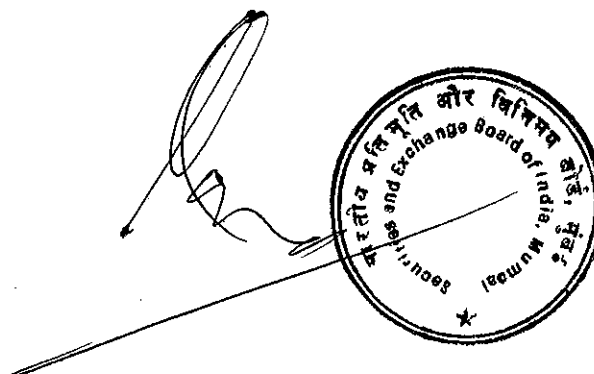


were in police custody. They were, hence unable to provide the requisite information as desired by SEBI.

2.2 In view of this, SEBI, vide letters dated November 07, 2013 & December 02, 2013, requested the Superintendent of Police- Gwalior to provide the aforesaid relevant materials/records (as sought by SEBI from KMJ Developers vide letter dated November 22, 2012). Later, an officer of SEBI personally visited the office of Superintendent of Police- Gwalior on December 19, 2013, who informed that the records were in custody of the Collector. Thus, a letter dated December 19, 2013 was personally handed over to the office of Collector, requesting to provide the relevant materials/records.

2.3 In the meanwhile, CBI, vide letter dated October 23, 2013, forwarded a copy of the aforesaid "Status Report" filed by them before the Hon'ble High Court of Madhya Pradesh, to SEBI. The important findings/observations of the CBI in respect of KMJ Developers were as under:

- *The company provides facilities to the customers to purchase land by paying consideration and after receiving money, company allots land to the customers. The allotted land to the customers is agricultural land in which company engages itself to develop the land through cultivation and scientific research and increase productive capacity of the land,*
- *According to the company, it is having pieces of land at Vijayawada, Gwalior, Agra, Jhansi, Bhilwara, Durg, Varanasi, Kanpur, Morena and Itarsi. The company possesses approximately 233 hectares of land as owner all over India which is equivalent to 27,85,999.0134 sq. yds. The land at Gwalior measuring 64 hectares, which is equivalent to 7,65,433.63 sq. yds. has been attached by Collector, Gwalior,*
- *Since its inception in June 2008 there are a total of 4,11,904 customers of the company till June 2011. Out of these, 60,072 are under lump sum payment plan and 3,51,832 are under regular installment plan. A total of 20,474 persons have been*



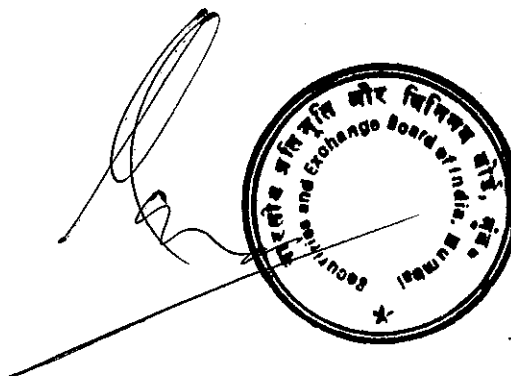
issued allotment letters allotting the lands at different places all over India. The land allotted against this allotment is equivalent to 3,35,915.78 sq. yards. All the allotment letters have been issued under lump sum payment plan and there has been no allotment under regular installment plan as none of those customers have completed the tenure/ have deposited the requisite amount for allotment, no sale deeds have been executed by the company with any of its customers.

- *During the course of enquiry, it was revealed that in some cases the investors were aware that the land will be purchased against their deposits while in other cases they were under the impression that it was a simple investment policy. In cases where the customers were aware of the purchasing of land, it was told to them that they had the discretion either to take the land or the estimated realizable value at the end of the agreement term.*

2.4 Subsequent to this, SEBI made several attempts to obtain information/documents in respect of the business activity of KMJ Developers from the Collector, Gwalior, vide several letters and reminders dated February 07, 2014, June 27, 2014, July 10, 2014 etc. However, SEBI has not been able to obtain the requisite details, till date.

2.5 In the meanwhile, SEBI received a reference, vide letter March 27, 2014, from Office of Collector, Rajnandgaon, Chattisgarh requesting SEBI to examine the activities of three companies including KMJ Developers from perspective of 'collective investment scheme'. A file containing information/documents gathered against KMJ Developers, including sample agreement, application form, Brochure, Registration Letter, etc. pertaining to the scheme offered by KMJ Developers was also forwarded to SEBI from the Office of Collector. It was observed that KMJ Developers vide its letter dated March 12, 2014 to the Collector, Rajnandgaon informed that their Rajnandgaon branch situated at Daga Cement House, 1st Floor, Old Ganj Chowk, Lakholi Road, Rajnandgaon (C.G.) had stopped doing any fresh business since December 2012.

2.6 As mentioned in Paragraph No. 2.1 above, KMJ Developers informed SEBI that they were unable to submit the details asked for, as their office had been sealed by the



Collector of Gwalior, vide an order dated May 04, 2011. However, this is not borne by facts as detailed below:

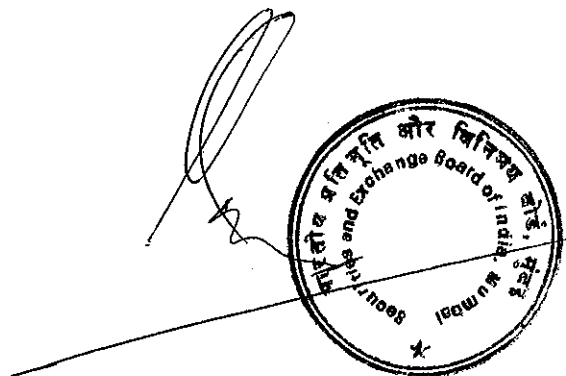
a. As per MCA website, it was observed that auditor's report dated September 01, 2012 was filed by KMJ Developers for financial year 2011-12. As per the audited balance sheet of KMJ Developers for financial year 2011-12, the company had taken ₹ 81.60 Cr. as advance from customers against sale of land units as on March 31, 2012. This figure was ₹ 63.66 cr. as on March 31, 2011. The company held land having value of ₹ 29.33Cr. as on March 31, 2012 and ₹28.62Cr. as on March 31, 2011. The auditors cannot prepare the documents in isolation, unless the management provides the records.

b. SEBI also received a copy of "Registration Certificate" dated February 24, 2012 (with No.025R00002843) issued by KMJ Developers to an investor. Clearly the fund mobilization was continuing even after the order/action of Collector of Gwalior in 2011.

2.7 SEBI, vide letter dated July 22, 2014 communicated the aforesaid observations to KMJ Developers. They were also advised to provide their comments in respect of the "Registration Certificate" dated February 24, 2012 (mentioned in item No. c, above) alleged to have been issued by KMJ Developers to an investor after the premises was sealed by the Collector. SEBI, vide another letter dated July 23, 2014, advised KMJ Developers to furnish the requisite documents/information, latest by July 30, 2014. Copies of this letter were also sent to the directors of KMJ Developers for compliance.

2.8 On July 29, 2014, SEBI received a letter from Mr. Santoshi Lal Rathore, director of the company, wherein it was stated:

- The Managing Director of the company was released on bail in the case, FIR NO. 154/2011 (Police Station Vishwavidyalaya, Gwalior) on June 23, 2014.
- The entire records of the company was seized.
- KMJ Developers had not collected money after the order of Collector of Gwalior on May 04, 2011.



- Some disgruntled employees of the company have issued fake registration certificate or misused the same and have collected money without authority.

2.9 On August 06, 2014, SEBI received a fax from the Advocate of the company requesting for additional one-week time to submit the reply. On August 19, 2014, SEBI received a letter from KMJ Developers, enclosing the following documents:-

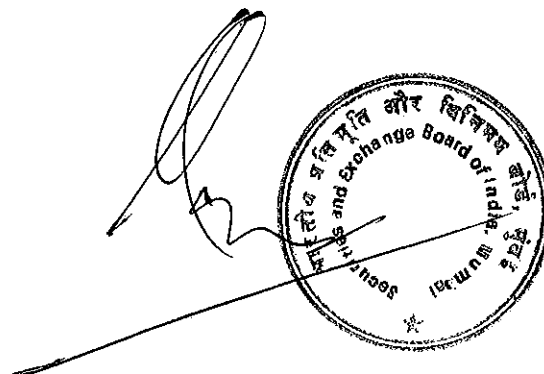
- Memorandum and Article of Association (MoA and AoA) of KMJ Developers,
- Details of past & present directors of the company,
- Copy of "Phamplet" pertaining the schemes made available to public,
- Sample copy of the Booklet containing the application form and agreement,
- Copy of allotment letter issued to an applicant who subscribed to schemes,
- Copy of financial statements for 2009-10 to 2011-12.
- Copy of Income Tax return for the last three years.

2.9.1 KMJ Developers has, till date, failed to furnish the relevant information and documents sought by SEBI, *viz.* the details of the scheme- wise amounts mobilized by them along with the number of investors under the schemes, etc.

2.10 On October 21, 2014, SEBI received an anonymous complaint against KMJ Developers alleging *inter alia*,

- "KMJ Land Developers India Ltd. is still in operation and is collecting huge amount of money in their organization,
- Another company registered as "Lokhit Bharti Credit Co-operative Society" [LHBCCS] is the sister concern of KMJ Land Developers India Ltd. with registered address A-10, Meera Bagh, New Delhi. All the funds collected is being transferred in LHBCCS as white money.
- Everyday huge amount of money in crores is being transferred from KMJ to LHBCCS and this money is being collected by KMJ Land Developers India Ltd. "

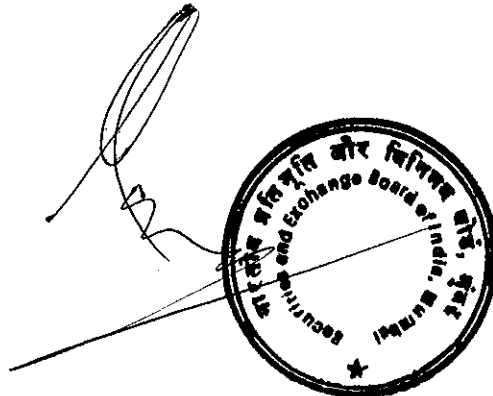
3. I have carefully perused the aforesaid documents and material available on record such as, correspondence exchanged between SEBI and KMJ Developers along with the documents contained therein; the submissions made by KMJ Developers; the copy of the Order dated



July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of *Dharmvir Singh and Anr. Vs. Union of India & Ors. [Writ petition No. 3332 of 2010 (PIL)]*, file containing documents/information forwarded by the Collector, Rajnandgaon and the observations made therein. The issue for determination in the instant matter is whether the mobilization of funds by KMJ Developers is a 'collective investment scheme' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act").

3.1 On an examination of the aforesaid material available on record, it is *prima facie* observed that:

- i. KMJ Land Developers India Ltd. (CIN: U70101MP2008PLC020823) was incorporated on June 26, 2008 and the registered office of the company is situated at 10, Fortune Plaza, Shrimant Madhav Rao Scindia Road, City Centre, Gwalior, Madhya Pradesh-474011.
- ii. The present directors of KMJ Developers are, Mr. Santoshi Lal Rathore, Mrs. Nirmala Rathore and Mrs. Kanchan Kushwah. Past directors are Mr. Gopal Prasad Gupta, Mr. Dilip Jain, Mr. Sunil Singh, Mrs. Mathura Bai and Mr. Sunil Singh Kushwah.
- iii. As per the memorandum of association of KMJ Developers, main objects of the Company are "*to erect, build, repair, remodel, demolish, develop, and improve houses, buildings.....to carry own business as owners, builders, colonizers, developers of residential, commercial and industrial building, colonies etc.*"
- iv. It is observed from the "*brochure*" of KMJ Developers, (forwarded by Collector, Rajnandgaon, Chhattisgarh) that: -
 - a. KMJ Developers is engaged in the business of purchase/sale, development and maintenance of agricultural land. KMJ Developers collects money from the public through its various payment plans for the scheme of "*purchase/sale, development and maintenance of agricultural land*", The plans are broadly divided into,



- *Lump Sum payment plan* and,
- *Regular Installment Plan.*

b. The plans offered in "*Lump Sum Payment Plan*" were Plan No. 2 (24 month plan), Plan No. 3 (36 month plan), Plan No. 4 (48 months plan), Plan 12 (60 months plan), Plan 13 (72 months plan), Plan 14 (96 months plan), Plan 15 (120 months plan), Plan 16 (144 months plan) and Plan 17 (180 months plan).

c. Similarly, plans offered in "*Regular Installment Plan*" were Plan 202 (36 month plan), Plan 203 (48 months plan), Plan 204 (66 months plan), Plan 205 (78 months plan), Plan 206 (90 months plan), Plan 207 (120 months plan) and Plan 208 (180 months plan). A sample table of "*Lump Sum Payment Plan*" and "*Regular Installment Plan*" is given below:-

Plan No. 14- 96 Month (8 year) Plan

Unit*	Consideration Value	Estimated Realizable Value
50	5,000	12,750
100	10,000	25,500
150	15,000	38,250
200	20,000	51,000
250	25,000	63,750
500	50,000	1,27,500
1000	1,00,000	2,55,000

Plan 208 -180 month (15 year) Plan

Unit*	Consideration Value	Installments				Estimated Realizable Value
		MLY	QLY	HLY	YLY	
180	18,000	100	290	570	1,130	47,000
360	36,000	200	580	1,140	2,260	94,000
540	54,000	300	870	1,710	3,390	1,41,000
720	72,000	400	1,160	2,280	4,520	1,88,000
900	90,000	500	1,450	2,850	5,650	2,35,000
1080	1,08,000	600	1,740	3,420	6,780	2,82,000
1260	1,26,000	700	2,030	3,990	7,910	3,29,000
1440	1,44,000	800	2,320	4,560	9,040	3,76,000
1620	1,62,000	900	2,610	5,130	10,170	4,23,000
1800	1,80,000	1,000	2,900	5,700	11,300	4,70,000

*1 unit is equal to 1 sq. ft.

- v. The "*customers*"/investors who are interested in the aforesaid scheme of KMJ Developers

are made to execute an "Application cum Agreement" with KMJ Developers. The application form & agreement to be submitted by the "customer"/investor with the company is in the form of a booklet. The application form contains basic details of the applicant (like name, address etc.), plan details (giving plan number, number of land units, terms of plan, total consideration, lumpsum payment, regular installment plan, mode of payment), expected realizable value, application charges, expiry date of agreement), etc. Following are noted in the sample "Agreement" (Booklet) (furnished by KMJ Developers vide its letter dated August 19, 2014),

"WHERE AS KMJ is engaged in the business of real estate and Development and maintenance or agriculture land and undeveloped land at various places.

WHERE AS KMJ organizes the sale of agricultural land of different sizes, to prospective buyers and undertakes the development and maintenance of the same.

WHERE AS KMJ is in the process of making arrangement s/ has made arrangements for purchasing /procuring the land, forming part of various plans launched by KMJ with clear and marketable titles.

AND WHEREAS THE CUSTOMER has /have requested KMJ to arrange for the sale of the said agricultural land /undeveloped land (hereinafter referred as the said property) in his/her/ their favour and to develop and maintain the same by rendering various services in accordance with the said plan.

1. ALLOTMENT /SALE OF LAND UNIT

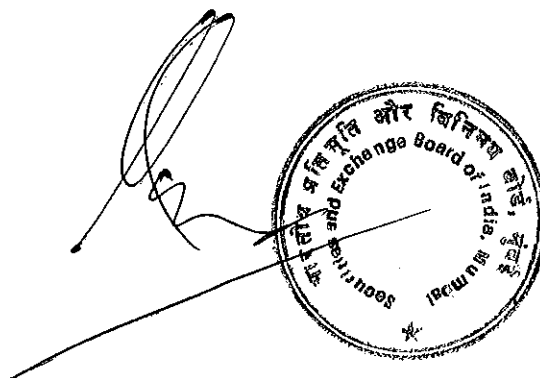
In the case of Lump Sum Payment plan(LPP the land shall be allotted in the name of customer after receipt of full consideration amount with in a period of 365 days and in case of Regular Installment Plans (RIP) after having receipt of 60% of the consideration amount for the plot and charges.Since fragmentation into smaller size of land unit(s) land may not be practicable, feasible or permissible under the relevant revenue laws, the customer shall have the requisite share along with other allottees.

2. DEVELOPMENT AND MAINTENANCE

KMJ shall have the right to develop and maintain the said property in consultation with experts, and customer shall ordinarily interfere, with the method and mode of development and maintenance for the said property including survey demarcation , fencing clearing cultivation planting and raising of crops trees plants saplings etc use of fertilizers pesticides irrigation harvesting and all other allied or incidental thereof.....

3. CONSIDERATION

The customer shall pay in aggregate sum of Rs _____ (Rupees _____ only) as per payment schedule of Plan opted for by him towards Consideration for the acquisition sale development and maintenance of the



aforesaid property of KMJ and for such allied expenses as may be allocable apportionable or appropriable to the said property.

4. POSSESSION

..... KMJ shall have first charge on said property on account of its unpaid installments for service / development charges and for other incidental expenses incurred by KMJ. The said property cannot, in any other manner be sold, Assigned, mortgaged pledged or alienated without obtaining NO DUES CERTIFICATE from KMJ.

Allotment of land shall be made after receiving payment in the case of Lumpsum Payment Plan within 365 days and in the case of Regular Installment Payment after receiving 60% payment within 90 days. Subject to foregoing, the land ownership would be ordinarily transferred in the name of Customer within a reasonable period after allotment.

In case KMJ commits a breach of agreement by not allotting the said land unit in favour of applicant in the manner agreed to, applicant shall be entitled to terminate the agreement, in which event KMJ shall refund the amounts paid by Customer together with simple interest @ 12.5% per annum from the date of agreement.

5. SALE OF DEVELOPMENT PROPERTY

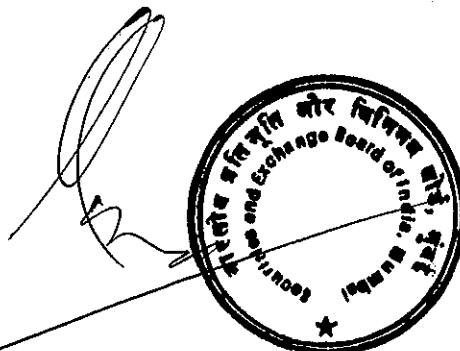
The customer has the right to retain or sell the said property, as he / she may deem fit on expiry of the tenure of this agreement. To facilitate easy liquidity, KMJ provides to customer (s) the marketing services for sale of developed plots. IN case the customer decides to avail of KMJ aforesaid services,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

6. CUSTODY OF TITLE DEEDS

The title deeds pertaining to the sale of this property shall be kept in the safe custody of the trustee (s) appointed by KMJ. The name and address of the trustee (s) shall be informed to the CUSTOMER by the letter of allotment. The CUSTOMER shall have the liberty to verify the title deed at the office of trustee (s) during the normal working hours on any working day, after furnishing a formal written request within 15 days in advance."

- vi. After executing the said agreement, KMJ Developers issues "Registration Certificate" to the "customer"/investor acknowledging the receipt of the payment (lumpsum or installment) as per the plan opted by the "customers'/investors. The sample "Registration Certificate" contains the following information,

- Details of the customer name/address and other details,


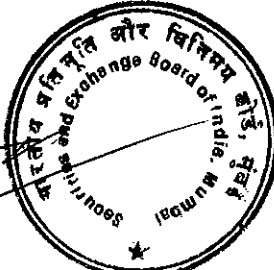


- Registration No. & date of commencement and Plan No. & term,
- Land unit(s) consideration,
- Periodicity and Mode of payment,
- Details of "Assured realizable Value" at the end of term and Date of Realizable value at the end of term,
- Amount of instalment,
- Date of last instalment,
- Instalment due date.

vii. It is observed that under "Lump Sum Payment Plan", the "customers"/investors are generally given "Allotment Letter" within 365 days. Under "Regular Installment Payment Plan", "customers"/investors are given land allotment letters within 90 days on payment of 60% of installments.

viii. From the copy of an "Allotment Letter" dated February 01, 2011 issued to a "customer"/investor (furnished by KMJ Developers) in response to the application dated April 24, 2010, it is observed that the certificate mentions that a 200 sq. ft. land is allotted at village Patharra, Tehsil-Bemetara, PO- Jebara, District-Durg, Chhattisgarh against a payment of ₹20,000/- made under "Lump Sum Payment Plan". It is also noted that the said allotment letter was issued after 9 months from the date of application and making the payment under "Lump Sum Payment Plan". Following clauses are noted in the said "Allotment Letter" issued by KMJ Developers,

- **However, KMJ LAND DEVELOPERS INDIA LIMITED reserves the right to change the location of this allotment, and allot you alternate site at the other place.**
- *The allotment and the subsequent conveyance of the land unit (s) to you shall be only in conformity with the terms and conditions of application and agreement executed by you. A sum of Rs. __ (Rupees _____ only) _____ by you to KMJ LAND DEVELOPERS INDIA LIMITED under cash down payment plan no. __ has been appropriated by KMJ LAND DEVELOPERS INDIA LIMITED towards the cost which are to be met for procuring the*

said property and conveying to you developing the same planting the required saplings plants trees crops etc. and other ancillary expenses incidental thereto.

- **The sale deed in respect of land units(s) allotted to you, shall be executed and registered shortly.** Where, however, transfer of such ___ land units of land is prohibited by law or other wise not possible /feasible practicable. KMJ LAND DEVELOPERS INDIA LIMITED ___ arrange for transfer of title of the said land unit(s) in favour of the customer in joint holding with other like customer KMJ LAND DEVELOPERS INDIA LIMITED shall execute /procure execution of joint sale deed in favour of the said customers (including the customer) conveying the proportionate area of land unit(s) to them. Where the title of land unit(s) is transferred to Customer in joint ___ with other customers by means of joint sale deed, the original sale deed shall be entrusted to custodial services company.....
- Any dispute or difference whatsoever arising between the parties out of or relating to the construction meaning scope operation or agreement or the validity or the breach thereof shall be referred to any retired judicial officer who shall be appointed KMJ LAND DEVELOPERS INDIA LIMITED as the sole arbiter and shall be settled in accordance with arbitration and conciliation 1996

ix. On analyzing the balance-sheet of KMJ Developers, the following facts are observed:

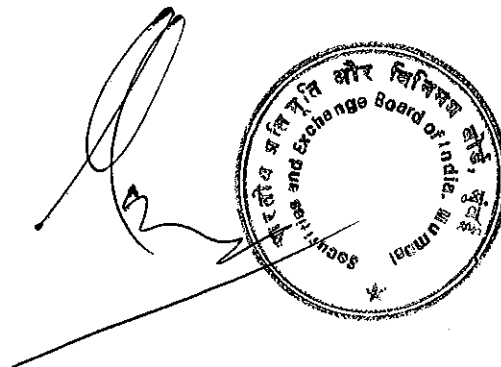
A. Advances taken from customers are as below :-

- As on March 31, 2009 is ₹3,96,36,340/-
- As on March 31, 2010 is ₹2,46,83,267/-
- As on March 31, 2011 is ₹63,65,96,106/-
- As on March 31, 2012 is ₹81,60,59,765/-

From the above, it is evident that advances from customers had significantly increased during 2011-12, i.e even after the Order dated May 04, 2011 of Collector, Gwalior. This indicates that the contention put forth by KMJ Developers that it has stopped collecting funds from the public after the Order of the Collector is not true. This is further substantiated by the "Registration Certificate" dated February 24, 2012 found to have been issued by KMJ Developers to a "customer"/investor.

B. Advances for land, paid by KMJ Developers as below:-

- As on March 31, 2009- ₹37,72,370/-



- As on March 31, 2010-₹4,83,48,920/-
- As on March 31, 2011-₹15,51,20,013/-
- As on March 31, 2012-₹17,14,16,542/-

C. The cost of sales is as below: -

Cost of Sales (in ₹ Cr.)	As on March 31, 2009	As on March 31, 2010	As on March 31, 2011	As on March 31, 2012
Cost of land allotted	20,50,402.18	3,87,93,739.42	6,38,17,354.00	5,27,82,116.00
Land & Site Development expense	63,91,817.00	2,45,34,282.00	6,78,07,663.00	-
Commission	2,20,31,298.00	11,19,99,292.00	18,92,94,990.00	28,82,41,124.00
	3,04,73,517.18	17,53,27,313.42	32,09,20,007.00	34,10,23,240.00

D. The company held land having value of ₹ 29.33 Cr. as on March 31, 2012 and ₹ 28.62 cr. as on March 31, 2011. The inventory of land is as below:-

Inventories (in ₹ Cr.)	As on March 31, 2009	As on March 31, 2010	As on March 31, 2011	As on March 31, 2012
Opening Stock	0	5,59,847.82	12,33,04,468.40	28,62,93,655.00
Add: Land purchased during the year	26,10,250.00	16,15,38,360.00	22,68,06,541.00	5,98,10,775.00
Less: Allotment made during the year	20,50,402.18	3,87,93,739.42	6,38,17,354.00	5,27,82,116.00
Closing Stock	5,59,847.82	12,33,04,468.40	28,62,93,655.40	29,33,22,314.00

From the above tables, the following noteworthy facts can be seen:

- The total advances taken from the customers by KMJ Developers, as on March 31, 2012 is ₹81.60 Cr. and the amount expended as commission for promoting their scheme as on March 31, 2012 is ₹28.82 Cr. (35.32%). This clearly indicates that a significant portion of the amount collected from the customers/investors are being expended for commission.
 - As per the balance sheet as on March 31, 2012, the main elements in the total "Cost of Sales" of the Company(₹34.10 Cr.), are (1) Cost of Land, ₹5.28 Cr. (a mere 15.5%) and (2) Commission, ₹28.82 Cr. (an astounding 84.5%). In other words, the commission paid is almost 5.5 times the cost of land.
- x. KMJ Developers in its "Pamphlet" stated that they provide an option for weaker section of people to deal in real estate, which is done by pooling. It is informed that land is

available at the addresses mentioned below.

- Jhansi Road, District Gwalior, MP
- Kulait Kharia, District Gwalior, MP
- Billethi Supawali, Murar, District Gwalior, MP.
- Sumer Pada, Mora, Gwalior, MP
- Mehtouli/ Goutra, District Morena, MP.
- Khairagarh, Bharatpur Road, Sarendi Chouraha, District Agra, UP.
- Vabhra, District Durg, Chattishgarh.
- Hurda, District Bhilwara, Rajasthan.
- Kasawar Raja, District Varanasi, Uttar Pradesh.

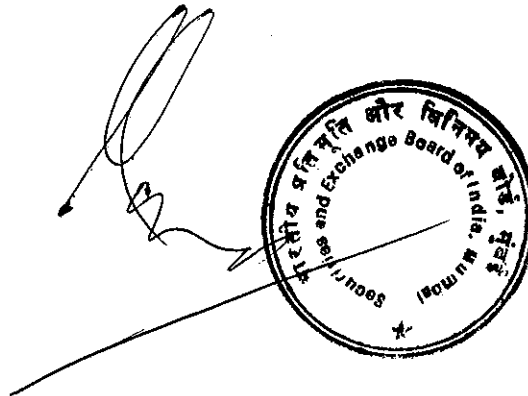
4. The aforementioned features of the so-called "Sale/purchase, development and maintenance of agricultural land" offered by KMJ Developers have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or sub-section (2A) shall be a collective investment scheme.

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

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

- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*



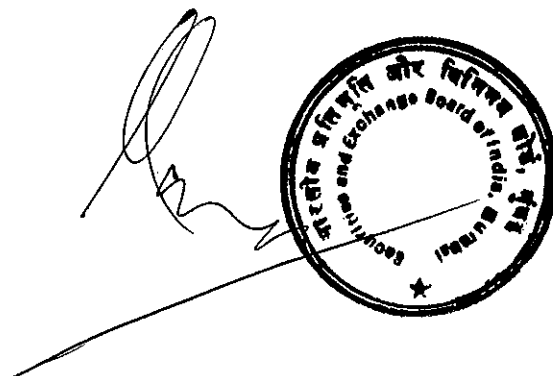
- (iii) *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- (iv) *the investors do not have day to day control over the management and operation of the scheme or arrangement."*

4.1 In the context of the abovementioned Section 11AA of the SEBI Act, the "Scheme" offered by KMJ Developers is 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.*

It is apparent from the scheme offered by KMJ Developers as noted from the "brochure", "Application Form", sample "Registration Letter" that the company is collecting funds from general public towards its scheme for the "sale/purchase, development and maintenance of agricultural land" through various plans as detailed in Paragraph No.3.1 (iv) above. It is observed from the financial statements that funds received from investors are pooled together as "Advance from customers against sale of land units". It is important to note that no plot/land is identified and demarcated at the stage when an individual "customer"/investor enters into the "Agreement" with KMJ Developers or at the time of issuance of "Registration Certificate" by KMJ Developers.

The "Agreement" executed by the "customer"/investor does not specify any time period within which the land/plot is to be transferred to the "customer"/investor by way of a sale deed. As per the agreement, "in case of Lump Sum Payment Plan, the land shall be allotted [by way of an allotment letter] in the name of customer after receipt of full consideration amount within a period of 365 days and in case of Regular Instalment Plan, after the receipt of 60% of the consideration amount of the plot". The "Allotment Letter" states, "The sale deed in respect of land units(s) allotted to you, shall be executed and registered shortly". The "Registration Certificate" issued to the "customer"/investor does not indicate any specific particulars of the land/plot forming part of the scheme offered by KMJ Developers. An assured amount ("Assured amount realizable at the end of the term"), which the "customer"/investor is entitled to at the end of the term is mentioned in the said certificate. From this, it is not clear, as to when the plot/land would be transferred to the "customer"/investor (by way of a sale deed), even after the



receipt of full consideration amount in case of single installment plan. It is further noted that even though the "Allotment Letter" issued by KMJ Developers contains the details of a specific plot, as per the clauses mentioned in the "Allotment Letter", KMJ Developers have the right to change the location of the said land stated to have been allotted to the investors and it can allot an alternate site at some other place. This indicates that the so-called "allotment of land" is mere ruse created to show that the company is doing land transactions.

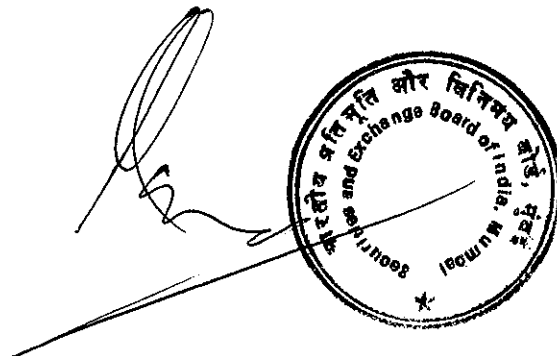
Hence, it is clear that the instant 'scheme' satisfies the first condition of "pooling of contribution or payments", stipulated in Section 11AA(2)(i) of the SEBI Act.

- (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.*

The "Registration Letter" issued to the "customers"/investors indicate an "assured amount realizable at the end of the term". From a copy of the "Registration Certificate" issued by KMJ Developers to one of its investors, it is noted that an investor opting for "Plan RIP/202" for a period of 3 years, where the "Land Unit Consideration" is mentioned as ₹5000/-, he/she has to pay an amount of ₹415/- per month. After the term period of 3 years, the investor is entitled to an "assured realizable value" of ₹6,250/- i.e. he/she is entitled to an amount of ₹1250/- as profit/return. In view of above, it is apparent that contributions of the "customers"/investors (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive the "assured realizable value"/profit/return. I therefore, find that the instant scheme also satisfies the second condition stipulated in Section 11AA(2)(ii) 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.*

Following clauses in the "Application cum Agreement" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is



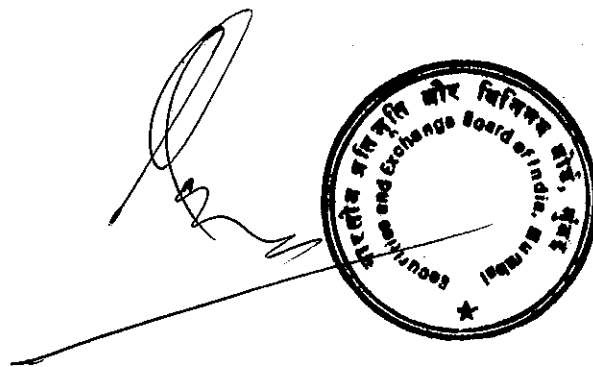
managed by KMJ Developers, on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement,

- "KMJ shall have the right to develop and maintain the said property in consultation with experts, and customer shall not ordinarily interfere, with the method and mode of development and maintenance of the said property.
- The customer shall pay in aggregate sum of Rs.....(Rupees ___only) as per payment schedule of Plan opted for by him towards consideration for the acquisition sale development and maintenance for the aforesaid property of KMJ and for such allied expenses as may be allocable apportionable or appropriable to the said property.
- The said property cannot, in any other manner be sold, assigned, mortgaged pledged or alienated without obtaining no dues certificate from KMJ".

The aforesaid clauses clearly indicate that the property, contribution or investment forming part of the scheme, is managed solely by KMJ Developers on behalf of the investors and the investors do not have day-to-day control over the management and operation of the 'Scheme(s)/ Plan(s)'. In view of the above, I find that the instant 'Scheme'/Plan satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act, 1992.

5. The aforesaid observations lead to the conclusion that the "scheme" of sale/purchase development and maintenance of agricultural land offered by KMJ Developers with an intended promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I find that KMJ Developers is engaged in the fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

5.1 In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of **P.G.F Limited & Ors. vs. UOI & Anr.** (MANU/SC/0247/2013), wherein the Hon'ble Court had occasion to adjudge on a scheme having features similar to the instant Scheme towards "Sale/Purchase, development

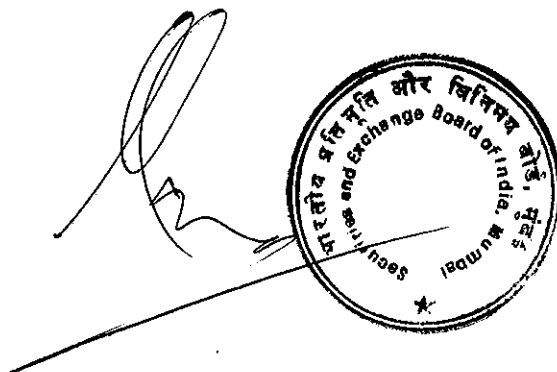


and maintenance of agricultural land”, as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

“A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor concerned.PGFL under the guise of sale and development of agricultural land in units of 150 sq. yards. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land..... In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion. ...

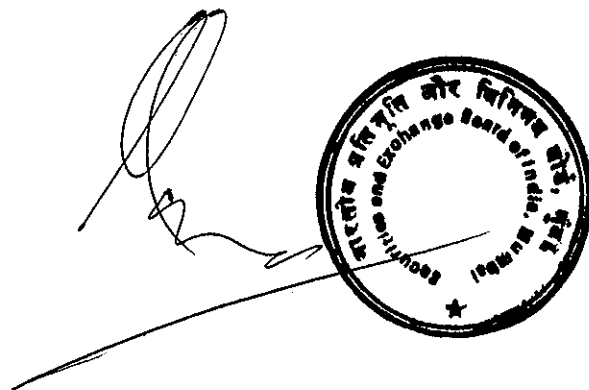
6. In light of the aforesaid observations of the Hon'ble Supreme Court of India in the **PGFL Case**, I find that the fund mobilizing activity of KMJ Developers, under the garb of a real estate business for the sale/purchase, development and maintenance of agricultural land falls squarely within the parameters of the concept of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

7. 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") provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. 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. In the instant case, KMJ Developers has launched 'collective investment scheme' without obtaining certificate of registration from SEBI, contravening the provisions of section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

8. It is further noted that Mr. Santoshi Lal Rathore, Mrs. Nirmala Rathore and Mrs. Kanchan Kushwah are the present directors of KMJ Developers and Mr. Gopal Prasad Gupta, Mr. Dilip Jain, Mr. Sunil Singh, Mrs. Mathura Bai and Mr. Sunil Singh Kushwah are the past directors of KMJ Developers. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities Market), 2003. Considering the fact that no prior registration was obtained by KMJ Developers in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that KMJ Developers is illegally mobilizing funds from the public, which *prima facie* amounts to 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.
9. It is further observed that KMJ Developers, vide letter dated July 29, 2014 to SEBI (as detailed in Paragraph No.2.8), contended that some disgruntled employees of KMJ Developers had issued fake registration certificate (*i.e* the "Registration Certificate" dated February 24, 2012, alleged to have been issued by KMJ Developers to an investor, forwarded to them by SEBI vide letter dated July 22, 2014 for their comments) and misused KMJ Developers' name and collected money without authority. In this regard, it is noted that KMJ Developers has not furnished a single document either to substantiate its contention that the said "Registration Certificate" is fake or to prove that the Company has stopped collecting fund mobilization after the Order of the Collector Gwalior. On the contrary, it is observed from the balance sheet of KMJ Developers, as has been detailed in Paragraph No. 3.1(ix), that as on March 31, 2011, KMJ Developers collected an amount of approx ₹63.66 Cr. and as on March 31, 2012, the amount collected by KMJ Developers has increased to ₹81.60 Cr. In view of this, I am unable to accept the contention put forth by KMJ Developers that it has stopped collecting funds from the public after the Order from Collector, Gwalior in May 04,

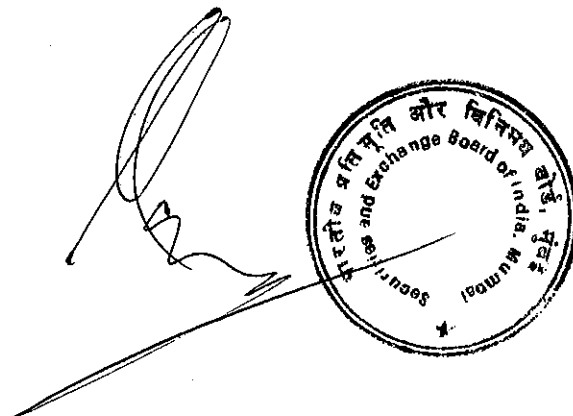


2011. KMJ Developers failed to submit the relevant information/documents sought by SEBI *viz.* details of the scheme wise amount mobilized by KMJ Developers till date along with the number of investors under the scheme etc. It is also particularly disconcerting that KMJ Developers has expended a significant amount out of the mobilized amount from the public as "*commission*" for promoting its "*scheme*". The commission paid is almost 5.5 times the cost of land (detailed in Paragraph No. 3.1(ix) at Page No. 13 above). There cannot be slightest doubt in any one's mind as to the prejudicial way the scheme is run to the detriment of investors.

10. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that KMJ Developers and its directors/promoters do not collect further funds under its schemes and to safeguard the assets/property acquired by KMJ Developers and its promoters/directors from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of an interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against KMJ Developers and its promoters/directors.

11. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct KMJ Land Developers India Ltd. (PAN:AADCK4402G) and its Directors, *viz.* Mr. Santoshi Lal Rathore, (PAN:AEEXPR6319A), Ms. Kanchan Rajawat Kushwah (PAN: AKLPR9493H), Ms. Nirmala Rathore (PAN: AEUPR2841G), Mr. Gopal Prasad Gupta, Mr. Dilip Jain, Mr. Sunil Singh, Mrs. Mathura Bai, and Mr. Sunil Singh Kushwah:

- a. *not to collect any fresh moneys from investors from its existing scheme;*
- b. *not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;*
- c. *not to dispose of any of the properties or alienate the assets of the existing scheme;*
- d. *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*



- e. to immediately submit the full inventory of the assets owned by KMJ Developers out of the amounts collected from the "customers"/investors under its existing schemes;
- f. to furnish all the information sought by SEBI, including
- i. scheme wise list of investors and their contact numbers and addresses,
 - ii. the details of amount mobilized and refunded till date,
 - iii. PAN of past directors of KMJ Developers

12. The above directions shall take effect immediately and shall be in force until further orders.

13. The *prima facie* observations contained in this Order are made on the basis of the material available on record. This order is without prejudice to the right of SEBI to take any other action that may be initiated against KMJ Land Developers India Ltd. and its Directors/Promoters in accordance with law.

14. KMJ Land Developers India Ltd. and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, file their reply, if any, to the *prima facie* observations made herein. KMJ Developers and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: December 09, 2014


S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

