

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

**ORDER**

**Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999**

**In the matter of Sai Prasad Properties Limited and its Directors, Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar**

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**Date of personal hearing : July 15, 2014**

**Appearance:**

**For Sai Prasad Properties Limited:**

1. Mr. Vishnu Sharma, Advocate
2. Prasoon Shukla
3. Amarendra Kumar, Consultant
4. Mr. Uday Verma, Consultant

**For the Securities and Exchange Board of India:**

1. Mr. Rajesh Kumar Dangeti, Deputy General Manager
  2. Ms. Anitha Anoop, Deputy General Manager
  3. Mr. Mridul Rastogi, Assistant General Manager
  4. Mr. T. Vinay Rajneesh, Assistant General Manager
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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had, vide an interim ex-parte Order dated July 17, 2013 ("the SEBI Order"), *prima facie* found that Sai Prasad Properties Limited (hereinafter referred to as "the Company") is engaged in fund mobilizing activities from the public by floating or sponsoring or launching Collective Investment Scheme ("CIS") as defined in section 11AA of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), without obtaining a certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and the SEBI (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations"). The directors of the Company, namely, Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar were also found liable for such alleged violations.

2. The SEBI Order, issued by SEBI in exercise of its powers under the SEBI Act and the CIS Regulations, was passed in order to protect the interest of investors who have invested/subscribed to the CISs of the Company and also to prevent the Company from further carrying on with its

illegitimate fund mobilizing activities through the alleged CISs. The SEBI Order had directed the Company and its directors, namely, Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar -

- a. *not to collect any more money from investors including under the existing schemes;*
- b. *not to launch any new schemes;*
- c. *not to dispose of any of the properties or alienate any of the assets of the schemes;*
- d. *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.*

3. The SEBI Order, which came into immediate effect, was to be treated as a show cause notice and the Company and its aforementioned directors (Company and its directors are collectively referred to as "the noticees") were advised to show cause as to why the plans/schemes identified in the SEBI Order should not be held as CIS in terms of section 11AA of the SEBI Act and CIS Regulations, and why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of regulations 65 and 73 of the CIS Regulations should not be taken against them. The noticees were also advised to file their reply within a period of 15 days from the date of receipt of the SEBI Order and also to indicate whether they wish to avail an opportunity of personal hearing in the matter.

4. After seeking extension of time (vide letter dated July 31, 2013) for filing its reply, the Company through its counsel, Mr. Vishnu Sharma vide letter dated September 12, 2013 sought an opportunity of inspection of documents which are relied upon by SEBI while passing the SEBI Order. The Company, vide letter dated September 13, 2013, also made a request for inspection of documents and *inter alia* made the following submissions :

- a) There is no investor in the company and whosoever participates in the Joint Venture Projects are the 'Co-Venturers'.
- b) There are no complaints against the Company regarding its commitments. The company has always met its commitments with all its participants i.e. co-venturers. The Company is required to refund/ repay its participants and its process has been slowed down due to the interim order (i.e., the SEBI Order).
- c) The Company has administrative expenditures/ overheads and statutory dues like Income Tax, PF etc which has to be met on a day to day basis. However, on account of the interim order, the company is facing serious hardships in discharging its legal duties.

- d) The Company through the 'joint venture', has a number of ongoing projects and farm development activities, which requires timely investments. This is being hampered.

The Company also requested SEBI to modify the SEBI Order to protect the interest of the co-venturers who have already participated on or prior to the date of the interim order and to allow the Company to receive/refund the subscription/commitments.

5. An opportunity for inspection of documents was afforded to the Company on September 24, 2013. Thereafter, the Company vide letter dated November 12, 2013 *inter alia* made the following submissions :

- a) The Company (PAN : AAMCS2738N) was incorporated in the year 2008 under the Companies Act, 1956.
- b) The Company is *inter alia* in the business of building and developing residential and commercial properties and other construction related business. It has entered into 'joint venture' collaboration for the business or its development/expansion with other parties either Indian or foreign.
- c) The Company is executing numerous projects in the fields of real estate viz., townships, commercial, residential and agricultural farms.
- d) The capital for its projects are raised from 'project participation' through the joint-venture.
- e) The project returns are expected and not promised. The associate decides the project in which he desires to invest.
- f) There is no investor in the Company and whosoever participates in the joint-venture projects are called as 'associates'. The co-venture participants are those who have actually participated/subscribed on their free will/offer in the joint venture projects of the Company.
- g) The Company owns more than 1272.2885 acres of projects in different states and more than 10 projects of the Company are underway.
- h) The Company has acquired offices and 'associate service centres' in various locations and has made investments (of around Rs.50 crores) for such establishments.
- i) The joint venture participation business model of the Company is a special combination of the Company and the associates, wherein profit is jointly sought for a specific venture without there being any active partnership between the parties. The contribution made by the associates are treated as capital of the joint venture. The refund of the participation

amount paid to the co-venture associates is made through the participation Subscription Structure of the Company.

- j) In pursuance of its Main Objects, the Company has been exercising/developing its activities/projects with various persons who associate themselves with the ongoing projects through joint venture participation.
- k) The participation of associates is through a joint venture agreement, as per the prescribed format of the Company. Under the joint-venture system, the Company also undertakes various project and farm development projects and associates of the Company are allotted a unit of project which is based on their participation value as per the different business plans/schemes/projects which are underway.

The Company has also made submissions regarding its business activities. The Company further submitted that it conducts its business all over the country and is governed by the provisions of the Companies Act, 1956 and it comes within the purview of the Ministry of Corporate Affairs, Government of India. The Company also stated that this reply is a partial reply and that it would file its reply with documents and requested time of 60 days for filing the same. The Company further stated that the SEBI Order has hampered its operations and requested that the said order may be modified to allow receipt of funds and refunds as per its commitments prior to the date of SEBI Order.

6. The Company also forwarded another letter dated November 12, 2013 to SEBI stating *inter alia* the following :

- a) The Company is willing to enroll under the CIS Regulations and all formalities may be completed within four weeks.
- b) Its business model should not be blocked and the same may be regularized.
- c) The SEBI Order may be modified as the Company was subjecting itself to the regulatory jurisdiction of SEBI.

I also note that SEBI vide letter dated December 16, 2013 informed the Company of the rejection of its request for enrolment as a CIS, as no person other than a Collective Investment Management Company which has obtained a certificate of registration can launch a CIS and that under scheme of

the CIS Regulations, only existing schemes (prior to notification of CIS Regulations) were permitted to make an application to SEBI for grant of certificate of registration.

7. An opportunity of personal hearing was afforded to the Company on December 18, 2013. As the Company requested for an adjournment, the personal hearing was rescheduled and fixed on January 16, 2014. However, the personal hearing was rescheduled. In respect of the personal hearing fixed on May 16, 2014, the Company's Advocate Mr. Vishnu Sharma, vide letter dated May 08, 2014, submitted the following :

- (a) The Company had stopped collection of contributions from its co-venture associates;
- (b) The Company has also started to send notices to its co-venture associates about the SEBI's directions and has requested them to settle their accounts;
- (c) Many of the co-venture associates started collecting the necessary application forms for closure of the joint venture account. The Company has also started the refund process on receipt of such forms;

The learned advocate requested for an adjournment of the personal hearing on the ground of General Elections and Court vacations. He requested that the personal hearing be fixed after July 05, 2014. Accordingly, the personal hearing was fixed on July 7, 2014 and the noticees were communicated of the same vide SEBI letter dated May 16, 2014.

8. Thereafter, the Company vide letter dated June 25, 2014, submitted that its Board does not wish to have any difference of opinion with regard to the scope and applicability of CIS Regulations and are subjecting itself before SEBI as the regulator. The Company also stated that it submits itself before SEBI for achieving the objects of the SEBI Act and that no money received by it remains unpaid. It stated that after passing of the SEBI Order, the Company did not start any new joint venture and the earlier money which was collected in the form of joint ventures etc are being refunded on its maturity or at the earliest as per demand. The Company also undertook to return the entire money at the earliest. The Company further stated that it would give the list of persons on the 15th day of every month regarding the details of money already returned.

9. The personal hearing had to be again adjourned to July 15, 2014 as the Company's Advocate requested for the same on account of his illness. In the personal hearing held on July 15, 2014, the

Company was represented by its Advocate, Mr. Vishnu Sharma, and other representatives. During the personal hearing, the learned advocate claimed that the Company had commenced making refunds to their investors and tendered the following :

- (a) Covering letter dated 15.07.2014, Summary of queries of SEBI and replies of Sai Prasad Properties Limited, Summary of queries of SEBI and replies of Sai Prasad Foods Limited, Summary of refunds made by Sai Prasad Foods Limited and Sai Prasad Properties Limited for the period : 01.04.2013 to 30.06.2014.
- (b) List of investors to whom repayments made by Sai Prasad Foods Limited (4 volumes)
- (c) List of investors to whom repayments made by Sai Prasad Properties Limited (3 volumes).

The learned advocate also submitted a Compact Disc stating that the same contained the information/data as furnished vide the above documents. Further, the Advocate undertook to submit the Audited Balance Sheets of the Company at the earliest.

**10.** As the Company did not submit the audited balance sheets, SEBI vide letter dated October 21, 2014 advised the Company to submit the same latest by October 31, 2014. Thereafter, the Company vide e-mail dated October 31, 2014 submitted the Balance Sheet of the Company as on March 31, 2014.

**11.** I have considered the SEBI Order cum SCN, the documents available on record and the submissions made by the Company including those made in the personal hearing.

**12.** The SEBI Order cum SCN has alleged that the Company is engaged in the activity of money mobilization through CISs without obtaining registration from SEBI as required under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations. Admittedly, the Company is not registered with SEBI for the purposes of operating, launching or floating collective investment schemes. Though the Company, in its subsequent correspondence, stated that it submits to the jurisdiction of SEBI with respect to its business activities, it becomes necessary to find whether its business/activities are in the nature of CIS and whether the Company is culpable of the alleged violation.

**13.** I have perused the Brochure, the Application Form, the Joint Venture Agreement, Allotment Letter and other material available on record. As per the Brochure, the Company has

stated that (i) it is in the business of construction of buildings for residence and commercial purposes and develops lands, renovates buildings and extend and enlarge buildings, reconstruction and plot layout etc., (ii) it is also engaged in the buying and selling of plots, (iii) in order to achieve such objectives/businesses, the Company issues units (against investment) to the public and 'joint venture partners' and (iv) in furtherance of its claimed business has offered the following plans to the public investors for subscription/investment :

Installment Payment Plan 'AP' for 54 months / 4 <sup>1/2</sup> years							
No. of Units	Total Participation	Participation Value				Expected Refund of Participation	Accidental Death Compensation
		M	Q	HLY	YLY		
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
0.50	6000	112	330	655	1300	8250	9000
1.00	12000	224	660	1310	2600	16500	18000
1.50	18000	336	990	1965	3900	24750	27000
2.00	24000	448	1320	2620	5200	33000	36000
2.50	30000	560	1650	3275	6500	41250	45000
5.00	60000	1120	3300	6550	13000	82500	90000
7.50	90000	1680	4950	9825	19500	123750	125000

Installment Payment Plan 'BP' for 66 months / 5 <sup>1/2</sup> years							
No. of Units	Total Participation (Rs.)	Participation Value				Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
		M	Q	HLY	YLY		
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
0.50	6000	91	270	535	1065	8850	9000
1.00	12000	182	540	1070	2130	17700	18000
1.50	18000	273	810	1605	3195	26550	27000
2.00	24000	364	1080	2140	4260	35400	36000
2.50	30000	455	1350	2675	5325	44250	45000
5.00	60000	910	2700	5350	10650	88500	90000
7.50	90000	1365	4050	8025	15975	132750	125000

Installment Payment Plan 'CP' for 78 months / 6 <sup>1/2</sup> years							
No. of Units	Total Participation	Participation Value				Expected Refund of Participation	Accidental Death Compensation
		M	Q	HLY	YLY		
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
0.50	6000	77	230	455	900	10250	9000
1.00	12000	154	460	910	1800	20500	18000
1.50	18000	231	690	1365	2700	30750	27000
2.00	24000	308	920	1820	3600	41000	36000
2.50	30000	385	1150	2275	4500	51250	45000
5.00	60000	770	2300	4550	9000	102500	90000
7.50	90000	1155	3450	6825	13500	153750	125000

Installment Payment Plan 'KP' for 96 months/ 8 years							
No. of Units	Total Participation	Participation Value				Expected Refund of Participation	Accidental Death Compensation
		M	Q	HLY	YLY		
		(Rs.)	(Rs.)	(Rs.)	(Rs.)		
0.50	6000	100	295	585	1160	11000	9000
1.00	12000	200	590	1170	2320	22000	18000
1.50	18000	300	885	1755	3480	33000	27000
2.00	24000	400	1180	2340	4640	44000	36000
2.50	30000	500	1475	2925	5800	55000	45000
5.00	60000	1000	2950	5850	11600	110000	90000
7.50	90000	1500	4425	8775	17400	165000	125000

One Time Payment Plan 'EP' for 66 months / 5 1/2 years			
No. of Units	Participation (Rs.)	Expected Return of Participation (Rs.)	Accidental Death Compensation (Rs.)
0.25	3000	6000	4500
0.50	6000	12000	9000
1.00	12000	24000	18000
1.50	18000	36000	27000
2.00	24000	48000	36000
2.50	30000	60000	45000
5.00	60000	120000	90000
7.50	90000	180000	125000

One Time Payment Plan 'FP' for 90 months / 7 1/2 years			
No. of Units	Participation (Rs.)	Expected Return of Participation (Rs.)	Accidental Death Compensation
0.25	3000	7500	4500
0.50	6000	15000	9000
1.00	12000	30000	18000
1.50	18000	45000	27000
2.00	24000	60000	36000
2.50	30000	75000	45000
5.00	60000	150000	90000
7.50	90000	225000	125000

One Time Payment Plan 'GP' for 108 months 9 years			
No. of Units	Participation (Rs.)	Expected Return of Participation (Rs.)	Accidental Death Compensation
0.50	6000	18000	9000
1.00	12000	36000	18000
1.50	18000	54000	27000
2.00	24000	72000	36000
2.50	30000	90000	45000

5.00	60000	180000	90000
7.50	90000	270000	125000

Monthly Income Plan 'HP' for 72 months / 6 years				
Sr.No.	Participation (Rs.)	Net Sum payable on Every Month (Rs.)	Expected Return of Participation (Rs.)	Accidental Death Compensation (Rs.)
1	5000	60	5000	7500
2	10000	120	10000	15000
3	15000	180	15000	22500
4	20000	240	20000	30000
5	25000	300	25000	37500
6	50000	600	50000	75000
7	100000	1200	100000	125000

Monthly Income Plan 'IP' for 72 months / 6 years			
Sr.No.	Participation (Rs.)	Net Sum payable on Every Month (Rs.)	Accidental Death Compensation (Rs.)
1	5000	60	3750
2	10000	120	7500
3	15000	180	11250
4	20000	240	15000
5	25000	300	18750
6	50000	600	37750
7	100000	1200	75000

Yearly Income 'JP' for 72 months / 6 years				
Sr.No.	Participation (Rs.)	Net Sum payable on Every Month (Rs.)	Expected Return on Participation (Rs.)	Accidental Death Compensation (Rs.)
1	5000	60	5000	9000
2	10000	120	10000	18000
3	15000	180	15000	27000
4	20000	240	20000	36000
5	25000	300	25000	45000
6	50000	600	50000	90000
7	100000	1200	100000	125000

Yearly Income Plan 'LP' for 72 months / 6 years			
Sr.No.	Participation (Rs.)	Net Sum payable Every Month (Rs.)	Accidental Death Compensation (Rs.)
1	5000	900	3750
2	10000	1800	7500
3	15000	2700	11250

4	20000	3600	15000
5	25000	4500	18750
6	50000	9000	37750
7	100000	18000	75000
<i>Note - In this plan 50% of participation value would be provided as NSC/BANK FDR in name of associate.</i>			
<i>Note = 1 Unit =500 sqft. Area of Land</i>			

14. As mentioned by the Company, it solicits investments in the nature of 'joint venture' in respect of its business. Further, the Company solicits investments under its plans/schemes. As per the **plans/schemes**, as mentioned above, the Company offers -

- (i) **Installment payment plan** for different tenures- 54 months, 66 months, 78 months and 96 months ;
- (ii) **One-time payment plan** for different tenures - 66 months, 90 months, 108 months; and
- (iii) **Monthly Income Plans** for 72 months, with different returns and accidental death benefits.

All the above plans promise a return on the investment (made on installment or on one-time payment basis), as per the scheme selected. The Company also offers 'Accidental Death Compensation' , in addition to the promised returns.

15. I also note the following clauses *inter alia* mentioned in the '**Agreement for Joint Venture Association**' (hereinafter referred to as "the **Agreement**"), executed between the Company and the customer (referred to as 'Joint Venture Associate' in this agreement) :

" .....

- *WHEREAS the Company is carrying on business of building & developing residential & commercial properties and to carry on the business as promoters, builders, developers, construction and maintenance contractors of industrial buildings, sheds, warehouses, shopping malls, multiplexes, hutments and structures and for that purpose undertake development of land; buildings, renovate, enlarge, extend, pull down, re-build and prepare layouts for building and construction activities. To develop, purchase, sale, lease out, rent out residential/commercial plots, dealing with objects incidental/ ancillary to the attainment of the main objects as mentioned herein.*
- *AND WHEREAS the Company is hereby authorized to enter into Agreement for borrow, to raise money or secure the payment money or receive money by way of Joint Venture or otherwise in such manner as the company may determine, and further authorised to invest or otherwise employ the money belonging or entrusted*

to the company in movable or immovable properties or in securities or in such other manner as may be deemed expedient.

- AND WHEREAS the company has launched various schemes/ plans to borrow or raise the money, to raise money to secure the payment of money and launch the various plans including the instalment, payment plans described in plan AP, BP, CP and KP so also one time payment plan EP, FP & GP for various periods in pursuance of rules and regulations made thereof including the expected sum payable on expiry of the said term and also consisting of the accidental compensation as contemplated in the said plans.
- AND WHEREAS the company is issuing the certificates to enable the company to raise finance especially described in the plan AP to EP, KP & GP hereinafter described and the party of the Second part (i.e., the Joint Venture Associate) came to know about the investment in said plan and agreed to investment in Company & to join him in Joint Venture with a view to carryout and complete the said finance raising object as joint venture.....

The party of the Second part and the party of the First part hereto agree to carry on the Joint Ventureship business on the terms and conditions herein mentioned herein agreed by & between the parties.

1. The Joint Venture shall be deemed to have (commenced) from the date mentioned on the certificate of investment plan issued by the company with the party of the second part along with the terms and conditions, restrictions mentioned therein and the Joint Ventureship shall be completed when the liabilities and responsibilities of the prospective parties are fulfilled upon completion of the said certificate Plan.
2. The Party of the Second Part have contributed with the Company the sum of Rs. \_\_\_\_\_ onwards Rs. \_\_\_\_\_ of the \_\_\_\_\_ certificate in category \_\_\_\_\_ plans dated \_\_\_\_\_ and on maturity the sum assured is payable to the extent of Rs. \_\_\_\_\_ and the party of the second part will contribute such further amounts as may be desired by him from time to time for carrying out the said work and the amounts will be treated as a participation made by him to the company in the participation plans of the company repayable to the party of the second part as per terms and conditions of the Certificate, Rule Book & Agreement.
3. That irrespective of the profit and losses suffered by the Company, the Company hereby undertake and assure to the party of the Second part to pay the amount of investment plans as per the category and on maturity subject to the fulfillment of terms and conditions or as the case may be otherwise.

4. The company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of the second part will have no nexus right of the shares or share capital of the company or to interfere in the company or the management and the policies of the company or/otherwise the board of directors will have sole and absolutely discretionary powers as per the Companies laws.

5. ....

6. ....

7. All the tangible and intangible assets of the Company including the goodwill, stock in trade, benefit of business license and permits, benefits of contracts entered etc will be in the name of the company and the property of the company shall be used by the company exclusively for the business of the Company and the Joint Venture shall have no nexus or right, title and interest in connection therewith.

8. At the end of maturity period the Joint Venturer will be entitled to withdraw/renew the said Certificate amount and the said Company will permit, towards repayment of the Certificate amount or renew the said certificate as per the Company's rules and regulations, terms & conditions mentioned in certificate, Rule Book & terms of this agreement. .

9. That the company has insured the life of Joint Venturer with the New India Insurance Company's and subject to the rules and regulations framed in respect there of as described in Rule Book, in connection with investment plan certificate issued to the Associate.

10. That the Company has reserved his rights to revival/amendment of this participation of the investment plan certificate as per the rules, regulations and procedures but same shall not affect the investment plan/certificates already issued to Associates.

11. ....

12. That company has issued investment plans 1) Installment Payment Plan 'AP' for 54 months/4.5 years 2) Installment Payment Plan 'BP' for 66 months/5.5 years 3) Installment Payment Plan 'CP' for 78 months/6.5 years 4) Installment payment plan 'KP' for 96 months/8 years 5) One Time Payment Plan 'EP' for 66 months/5.5 years 6) One Time Payment Plan 'FP' for 90 months/7.5 years 7) Investment Plan 'GP' for 108 months / 9 years. And the Company further reserved the right to introduce any other more schemes/certificate/plans depending on the situation of the Company....

13. That through this Agreement the Company has been collateral secured for realisation of amount of the said plan as agreed, issued letter of allocation of land with a ratio of Rs.12,000 of participation equal to 500 sq.ft. of land depending upon market price of land by Ready Reckoner of government. But

*this ratio can be changed / altered solely at the discretion of management depending upon promotion the cost/value of lands at the time of agreement. Further the company reserves the right of area allocation depending on availability of land at the time of agreement. The Company has issued separately the letter of allocation of land annexed herewith this agreement.*

*14. It is further agreed by and between the parties that in case the company is unable to repay the expected return of participation of the plan, in that event only the Company would help the Associate/ Joint Venturer to dispose of the allocated land at the written request of Associates as per process of law.*

*15. Company shall be entitled to alter/vary/modify the terms and conditions of this Agreement pertaining to new/un allotted investment plan certificate. The party of the second part herein acknowledges and admits & confirm such right of party of the 1st part in this regard.*

*16. ....*

*17. The Joint Venturer shall continue his/its participation till the completion as per the certificate of the investment plans or if by any chance the said investment plan is cancelled for any reason, till the cancellation of such certificates.*

*18. ....*

*19. It is agreed by & between the parties that this is Agreement for Joint Venture Associate and shall not be treated as partnership with the company by joint venture. Once repayment of participation is made to the associate then this agreement along with allocation letter will be automatically cancelled.*

*20. ...."*

*24. Once full & final payment of said certificate is paid to the associates, this joint venture agreement is automatically stands cancelled and said land allocated to the associates, becomes free from holding of associates and company thereafter has full holding of land.*

*....."*

**16.** A copy of the '**Rule Book**' of the Company, written in Hindi, is also available on record. This Rule Book mentions that the Company is in the business of building residential and commercial structures and in order to meet the said main objectives, the Company solicits investment from the public investors and joint-venture associates. The Company issues 'units' to such public investors and joint venture associates against their investments. The rule book also mentions about the schemes/plans floated, launched by the Company. The Company also assures its investors that they would not lose their money invested in the Company. The rule book also

provides that as indemnity to the customer, he is allotted 500 sq ft of land for Rs.12,000/- invested. As regards the location of the land, it is stated that the same would be known only when such transfer happens, which would be as per availability. The rule book also mentions all the plans/schemes which have been mentioned *supra*.

17. Having perused the above documents, I proceed to test whether the schemes/plans as impugned in the SEBI Order are a CIS satisfying the four conditions mentioned under section 11AA(2) of the SEBI Act.

- i. The first condition is that *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*. The Company has stated in its Brochure/Joint Venture Agreement/Rule Book that it is involved in the business of building/ developing residential and commercial properties and to carry on business as promoters, builders, developers, construction and maintenance contractors of industrial buildings etc. The Company in its joint venture agreement/rule book/submissions has stated that it raises money from public investors (public participation) through joint venture model for its business purposes/projects. The Company has stated that it is authorized to enter into agreement to borrow or raise money and has formulated various plans/schemes including the 'expected sum' payable on expiry of the term.

The joint venture agreement records the sum of money which the customer/associate would pay in pursuance of his participation in the plans/schemes of the Company. As per regulation 2(1)(dd) of the CIS Regulations, 'unit' includes any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of a unit holder. A unit holder is a person holding the unit in a scheme. Therefore, it is found that the Company has issued unit to its 'Associate', who is none other than a unit holder in the schemes offered by the Company. The Brochure states that 1 unit is equal to 500 sq. feet of land.

The submission of the Company that *"The joint venture participation business model of the Company is a special combination of the company and the associates, wherein profit is jointly sought for a specific venture without there being any active partnership between the parties. The contribution made by the associates are treated as capital of the joint venture. The refund of the participation amount paid to the co-venture associates is made through the participation Subscription Structure of the Company"* also gives

credence to the fact that money is pooled from investors for the purposes of the business of the Company

Clause 19 of the Joint Venture Agreement states that once full and final payment of said certificate is paid to the customer, the agreement stands cancelled. This further indicates that the relationship subsists only till the tenure of the plan/scheme which a customer has opted. This clearly shows that it is an investment transaction and not one of sale of land and thus substantiates that the monies received from the customers are pooled for the purposes of schemes launched by the Company.

I also note that the Company, in clause 13 of the Agreement, stated that "*That through this Agreement the Company has been collateral secured for realisation of amount of the said plan as agreed, issued letter of allocation of land with a ratio of Rs.12,000 of participation equal to 500 sq. ft. of land depending upon market price of land by Ready Reckoner of government. But this ratio can be changed / altered solely at the discretion of management depending upon promotion the cost/ value of lands at the time of agreement. Further the company reserves the right of area allocation depending on availability of land at the time of agreement. The Company has issued separately the letter of allocation of land annexed herewith this agreement*". I have also perused the "Allocation Letter" attached with the agreement. As per this letter, as an indemnity to the customer for payment of his investment on its maturity, the Company allocates, without prejudice to its right, a piece of land with the 'ratio of Rs.12,000/- of participation to 500 sq. ft. of land' to the customer. The details of the allotted land would be mentioned in this letter by the Company. The 'allocation letter' clearly states that the same is issued as Guarantee/Warranty to repay the amount of investment and that in case the Company goes into liquidation, only then the customer/joint venturer has the right and the Company would help the customer in disposing of the land. The said letter restrains the Customer from doing anything to the land, sell, assign, transfer, alienate, leave and license, mortgage, create any charge or any encumbrance of whatever nature on the piece of land.

From the above document, it becomes clear that the installments collected from the customer is not in respect of sale of the property so allocated vide the 'allocation letter'. As mentioned above, the Company has promised returns on the investment amount received

from the customers under the plans/schemes (offered by the Company) as opted for by the customer. All through the 'joint venture agreement' and the 'allocation letter', the Company acknowledges the payment of funds by the customer and the returns that it would give on maturity. Real estate is not a transaction which the Company is involved in under its schemes/plans.

Considering these factors, it can be concluded that the contributions or payments made by the public investors are pooled and utilised solely for the purposes of the schemes offered by the Company.

- ii. The second condition is that *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.* As seen from the various plans/schemes floated by the Company to receive funds from the customers/public investors, the Company has promised refund of the principal amount received from customers along with interest. The period of payment (installments) and the rate of return depends on the specific plans of the Company.

The Company also states in the Agreement that it has insured the life of Joint Venturer with the Insurance Company (*i.e., the New India Assurance Company Limited - as per clause 9 of the agreement for joint venture association*), in connection with investment plan certificate issued to the Associate. This may be seen as another benefit which the Company offers to its customers who agree to the arrangement and subscribe to its schemes/plans. However, it is noted that no proof of such claimed insurance facilities have been furnished by the Company.

The Company solicits funds from customer/public investors under its schemes/plans only with a promise of return on their investment. The customer therefore makes his *contributions or payments to such schemes only with a view to receive profit or income, from such scheme or arrangement.* Therefore, the second condition is also satisfied.

- iii. The third and fourth conditions specified under section 11AA(2) are that *"the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed 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".*

The Company calls its model of raising/collecting money from the public as 'joint venture'.

In this regard, I refer to the following clauses in the agreement :

**"Clause 4** - The company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of the second part will have no nexus right of the shares or share capital of the company or to interfere in the company or the management and the policies of the company or/otherwise the board of directors will have sole and absolutely discretionary powers as per the Companies laws.

**Clause 7** - All the tangible and intangible assets of the Company including the goodwill, stock in trade, benefit of business license and permits, benefits of contracts entered etc will be in the name of the company and the property of the company shall be used by the company exclusively for the business of the Company and the Joint Venture shall have no nexus or right, title and interest in connection therewith.

**Clause 8** - At the end of maturity period the Joint Venturer will be entitled to withdraw/renew the said Certificate amount and the said Company will permit, towards repayment of the Certificate amount or renew the said certificate as per the Company's rules and regulations, terms & conditions mentioned in certificate, Rule Book & terms of this agreement.

**Clause 10** - That the Company has reserved his rights to revival/amendment of this participation of the investment plan certificate as per the rules, regulations and procedures but same shall not affect the investment plan/certificates already issued to Associates.

**Clause 11** - That company has issued investment plans ..... Company further reserved the right to introduce any other more schemes/certificate/plans depending on the situation of the Company....

**Clause 15** - Company shall be entitled to alter/vary/modify the terms and conditions of this Agreement pertaining to new/unallotted investment plan certificate. The party of the second part herein acknowledges and admits & confirm such right of party of the 1st part in this regard.

**Clause 17** - The Joint Venturer shall continue his/its participation till the completion as per the certificate of the investment plans or if by any chance the said investment plan is cancelled for any reason, till the cancellation of such certificates.

**Clause 19** - It is agreed by & between the parties that this is Agreement for Joint Venture Associate and shall not be treated as partnership with the company by joint venture. Once repayment of participation is made to the associate then this agreement along with allocation letter will be automatically cancelled.

**Clause 24** - Once full & final payment of said certificate is paid to the associates, this joint venture agreement is automatically stands cancelled and said land allocated to the

associates, becomes free from holding of associates and company thereafter has full holding of land."

A reading of the above clauses would, without any ambiguity, lead to the only conclusion that the Company manages the investment received from customers/public investors under its schemes and such customers do not have any voice in the management of the schemes/plans and the day to day operations.

The Company has clearly (in clause 4) stated that the customer/associate shall have no right in the management and policies of the Company. The customer would only have to pay the installments, as per the plans opted by him/her. The customer does not have any right in the tangible or intangible assets of the Company. The only benefit, as per the agreement, to a customer is that, at the end of the tenure, he could withdraw the amount that is due to him or renew the certificate. The Company has kept with itself the right to change the plans/schemes. In clause 19 of the agreement, the Company has in unequivocal terms stated that "*It is agreed by & between the parties that this is Agreement for Joint Venture Associate and shall not be treated as partnership with the company by joint venture. Once repayment of participation is made to the associate then this agreement along with allocation letter will be automatically cancelled.*" The relationship between the Company and its customer subsists only till the tenure of the agreement and the same ceases after the monies are repaid.

The Customer apart from paying his installments has nothing more to do in the operations of the Company and the schemes in particular. The above clauses of the Agreement would also make it clear that the business model (i.e., Joint Venture) as proclaimed by the Company is not a joint venture in true sense of the same. A **Joint Venture** is a business model, whereby two or more parties come together in conceiving and executing a particular activity or business, as per the terms and conditions agreed to between/amongst them, generally called a Joint Venture (JV) Agreement. The parties to the joint venture agree to have equal rights/liabilities in the said venture and share the profits or losses, as the case may be, arising from the implementation of the said venture or business. This collaboration is akin to a 'partnership'. The associate (joint-venturer) would not have any connection or relation with the other business interests of the individual parties. As mentioned in the SEBI Order,

I also refer to the following observations made by the Hon'ble Supreme Court in the matter of *New Horizons Ltd vs. Union of India* [1995 (1) SCC 478] :

*“The expression ‘joint venture’ ... connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. [Black's Law Dictionary; Sixth Edition, p. 839].”*

In the present case, the Company calls its association with the customer/public investor as a Joint Venture. However, the terms and conditions of the 'Joint Venture Agreement' and the business model adopted by the Company for the purposes of mobilizing funds from the public is not a 'Joint Venture'. Therefore, it is a misnomer.

In view of the above observations, I find that the third and fourth conditions of section 11AA(2) of the SEBI Act are also satisfied.

**18.** In view of the above observations, the plans/schemes of the Company satisfy all the four conditions specified under section 11AA(2) of the SEBI Act. Therefore, such plans/schemes floated by the Company under the 'joint venture', which are impugned in these proceedings, are collective investment schemes. As the Company has not obtained registration from SEBI, under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations, such floating, sponsoring or execution of such CISs are not authorized and therefore illegal. Therefore, the monies collected from public investors, through such illegal and unauthorized money collection modes, need to be refunded to such investors with returns that have been promised to them. As the Company has carried out CISs illegally without obtaining registration from SEBI, the same cannot be regularized or authenticated at this stage under the SEBI Act read with the CIS Regulations. For the above violations, the directors/promoters of the Company, namely, Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar are also responsible and liable. Accordingly, suitable action needs to be taken against the Company as well as its above directors.

19. I also note that in terms of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and includes 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. This provision in the above Regulations has been brought into effect from September 06, 2013.

20. I note that in the Auditor's report (item (i) in page 4), it is stated that the "*Company has accepted the project participation money till January (of 2014) under the existing contracts*". Accordingly, it could be held that by mobilizing public funds through CIS without obtaining registration from SEBI, as required under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations, the Company has contravened the above provisions. Further, as it is certified by the auditor that the Company has been mobilizing funds from investors till January 2014; the same is a breach of the direction (i.e., not to collect any more money from investors under the existing schemes) issued vide the SEBI Order against the Company and its directors.

21. During the personal hearing, the authorized representative of the Company claimed that the Company had commenced making refunds to their investors. A list of investors to whom such refunds were claimed to have been made were submitted. As per this list, it is noticed that the Company claims to have refunded (i) 248 investors under 'accidental death' category, (ii) 552 investors under 'natural death' category and (iii) 42,026 investors to whom refund was made under regular claim. It was also claimed that 12 investors were paid in cash (for 2 under natural death claim and for 10 under regular claim) and rest 42,814 were repaid through the bank. (Total : 42,826 investors).

The Company has claimed to have repaid Rs.87.37 crores to 42,826 investors during the period April 1, 2013 to June 30, 2014. However, no documentary proof has been provided to substantiate such claims. Trail of funds, bank statements, receipts from investors whose dues are satisfied are not placed on record by the Company. It is also noted that details/identity of investors i.e. address, contact num, ID proof etc was not provided to ascertain the veracity of the claim. Therefore, such claims cannot be verified for their veracity. Further, the Company has also not provided a complete

list of investors and the total dues (*principal amount with promised interest*) payable to them in terms of the plans/schemes subscribed to by such investors.

22. The Company has also submitted a copy of the audited financials of the Company for the year ended March 31, 2014. From the same, it is observed that the auditor (item 3 at page 3 of auditor's report dated 05.09.2014) has noted that –

*“i. During the year the company has received “Project participation money” from various participants & outstanding balance on reporting date was Rs. 2093 crores. .... The company has accepted the project participation money till January under the existing contracts.”*

*“ii. During the year, the company has received “project participation money” from various participants which is in the nature of “Joint venture contribution”, considering the number of participants and volume of the transactions involved, we are not in position to verify the details of participants and source of his/her income. Also, as per information given to us there is an internal accounting policy for recording of the transactions relating to “Project participation money” and joint venture. ...”*

*“iv. As on balance sheet date, the company possesses huge cash balance. We have not able to verify this cash in hand physically....*

*The cumulative impact of aforesaid qualification of assets, Liabilities, income and Expenditure is not ascertainable.”*

As per the Balance Sheet as at March 31, 2014, the project participation value is **Rs.2039,38,55,309/- (i.e., Rs.2039 crores approx.)** as against **Rs.1668,60,34,458.50/- (Rs.1668 crores approx.)** for the year ended March 31, 2013. Considering the above statement made in the Balance Sheet and the comment of the Auditor that 'project participation money' is from various participants of the joint venture, this could be the amount mobilized by the Company from its business activity through 'joint venture' which is found to be in the nature of (unregistered) CIS activities. Though, the Balance Sheet refers to a list (B-1), the same has not been furnished by the Company.

The report also states that the Company has given unsecured loan to various companies covered in the register maintained under section 301 of the Companies Act, 1956. The maximum amount involved during the year in respect of such companies is Rs.2,97,89,72,238/- and the year-end balance in respect of such companies is Rs.2,89,40,96,971/-. Company-wise details as provided therein is given below:

S.No.	Related Party Name	Maximum Balance outstanding during the year	Year-end balance
1	Sai Prasad Foods Ltd	1,80,43,06,120	1,78,65,28,405
2	Sai Prasad Infra & Constro Pvt. Ltd.	85,42,51,927	79,92,91,808
3	Sai Prasad Landmarks Ltd.	2,30,00,000	2,30,00,000
4	Sai Prasad Media Pvt. Ltd.	29,00,00,000	28,12,85,621
5	Milan Petroleum	73,41,931	39,18,878
5	SP Global Finance & Investment Pvt. Ltd.	72,260	72,260
	Total	Rs.2,97,89,72,238/-	Rs.2,89,40,96,971/-

It is also observed that the Company has taken unsecured loan from two companies said to be the companies covered in the register (*for recording all contracts or arrangements in which directors are interested*) maintained under section 301 of the Companies Act, 1956, the details of which are as follow:

S.No.	Related Party Name	Amount Involved during the year (In Rs.)	Amount outstanding at reporting date (In Rs.)
1	Sai Prasad Corporation Ltd	1,49,83,20,436	1,38,73,40,435
2	Sai Prasad Energy Pvt. Ltd.	30,00,000	30,00,000

The auditor has also commented that they are unable to form opinion whether the loan taken by Company is prejudicial to the interest of the Company or not. The company has also made investment in shares of its group companies' details of which is under:

S.No.	Related Party Name	Amount Involved during the year (In Rs.)
1	Sai Prasad Landmarks Ltd	3,28,25,000
2	Sai Prasad Media Pvt. Ltd.	1,25,11,42,700
3	Sai Prasad Infra & Constro Pvt. Ltd.	65,40,50,000

23. I also note that SEBI had received a complaint dated December 6, 2013 *inter alia* alleging that the Company is still collecting money from public despite the SEBI order dated July 17, 2013. Accordingly, SEBI conducted an inspection of the books of accounts, other records and documents of the Company on January 13, 2014. During the course of inspection, SEBI noticed that the Company has failed to comply with the directions issued in the SEBI Order. For such violations, SEBI has initiated adjudication proceedings against the Company.

24. As discussed above in this Order, the Company by collecting money under the existing schemes from investors has violated the directions issued vide the SEBI Order. Further, SEBI, in its inspection has also noticed that the Company was involved in the diversion of its monies, for which adjudication proceedings has been initiated. In view of the above findings and observations made in this Order and the violations committed by the Company, it becomes necessary for SEBI to issue appropriate directions in order to protect the interest of investors and also to secure the interest of the securities market.

25. Accordingly, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11, 11(4) and 11B thereof read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions :

1. **Sai Prasad Properties Limited (PAN : AAMCS2738N)** and its promoters and directors including **Mr. Balasaheb K. Bhapkar (PAN : AFIPB3674A)** and **Mrs. Vandana B. Bhapkar (PAN : AFIPB3675B)** shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
2. **Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar**, shall wind up the existing Collective Investment Schemes and refund the monies collected by the said company under the schemes with returns which are due to its investors as per the terms of offer/agreement within a period of three months from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, along with the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
3. **Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar**, shall not alienate or dispose off

or sell any of the assets of the aforesaid company except for the purpose of making refunds to its investors as directed above.

4. **Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar** are also directed to immediately submit the complete and detailed inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
5. **Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar** are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.
6. In the event of failure by Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar, to comply with the directions in sub-paragraphs 1-4, the following actions shall follow:
  - i. Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar, shall remain restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, even after the completion of the four(4) years' period (of restraint) imposed vide sub-paragraph 5 above, till all the Collective Investment Schemes of Sai Prasad Properties Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
  - ii. SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Sai Prasad Properties Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
  - iii. SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Sai Prasad Properties Limited.
  - iv. SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

26. This order shall come into force with immediate effect.
27. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar, including other persons who are in default, for the violations as found in this Order.
28. With respect to the contravention of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, SEBI may examine whether to initiate appropriate proceedings under Sections 11(4) and 11B of the SEBI Act read with Regulation 65(e) of the CIS Regulations and Chapter VI A of the SEBI Act against Sai Prasad Properties Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar.
29. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

**PRASHANT SARAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date : January 14, 2015  
Place : Mumbai**