

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

S. No.	Name of the Intermediary	SEBI Registration no./ PAN
1.	Sameer Pande (Proprietor of Niftypro Trading Research)	Reg. no.: INH000009649 PAN: AMAPP3518Q

In the matter of Sameer Pande – Research Analyst (Proprietor of Niftypro Trading Research)

A. BACKGROUND:

1. Sameer Pande (Proprietor of Niftypro Trading Research) (hereinafter referred to as “**Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a Research Analyst since May 24, 2022 bearing registration no. INH000009649.
2. SEBI conducted a thematic inspection of the Noticee for the period from May 24, 2022 to January 31, 2024 (hereinafter referred to as “**Inspection period**”). The findings of the inspection were communicated to the Noticee *vide* letter dated March 21, 2024. After examining the reply submitted by the Noticee *vide* email dated March 27, 2024, SEBI observed violations of provisions of SEBI Act, 1992, SEBI (Research Analysts) Regulations, 2014 (hereinafter referred to as “**RA**

Regulations”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and SEBI Circular.

3. Pursuant to findings/ observations made in the course of inspection and after examining the response of the Noticee to the same, enquiry proceedings under SEBI (Intermediaries) Regulations, 2008 (“hereinafter referred to as “**Intermediaries Regulations**”) were initiated against the Noticee and a Designated Authority (hereinafter referred to as “**DA**”) was appointed on May 15, 2024 to enquire into the alleged violations by the Noticee and make a recommendation in compliance with Intermediaries Regulations. The DA issued a show cause notice dated June 13, 2024 to the Noticee under regulation 25 of Intermediaries regulations to show cause as to why appropriate recommendation should not be made against it in terms of Regulation 26 of the Intermediaries Regulations for the alleged violations given in the table below.

Table no. 1

S. No.	Alleged violations	Regulatory provisions allegedly violated
1.	Noticee’s website displayed statements indicating accuracy of stock recommendations, assuring profits and used misleading testimonials.	Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (k), (o) and (s) of PFUTP Regulations read with Sections 12 A (a), (b) and (c) of SEBI Act, 1992.
2.	Noticee’s sales representatives provided expected returns from trading based on Noticee’s recommendation to its clients.	Clauses 1, 2, 6, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations.
3.	Noticee’s sales representatives promised assured profits to clients from trading based on recommendations of the Noticee, during sales calls.	Clause C of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023(herein after referred to as “SEBI circular”).

4. Pursuant to the transfer of DA, another DA was appointed on July 22, 2024. In response to the show cause notice issued by the DA, the Noticee filed its reply vide email/ letter dated July 09, 2024. Further, an opportunity of personal hearing was granted by the DA on August 13, 2024, which was availed of by the Noticee.
5. Thereafter, upon completion of the enquiry, the DA submitted an Enquiry Report dated January 06, 2025 (hereinafter referred to as “**Enquiry Report**”) wherein the DA concluded that the Noticee was in violation of RA Regulations and SEBI Circular and recommended that the Noticee, as a Research Analyst, may be issued a regulatory censure.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

6. Based on the Enquiry Report, a post-Enquiry Show Cause Notice dated January 13, 2025 (hereinafter referred to as “**SCN**”) was issued to the Noticee, enclosing a copy of the Enquiry Report, calling upon it to show cause in terms of regulation 27(1) of the Intermediaries regulations as to why action as recommended by the DA or any other action in terms of the Intermediaries Regulations should not be taken against the Noticee.
7. In response to the SCN, the Noticee submitted its reply *vide* letter dated February 08, 2025. Thereafter, the Noticee was granted an opportunity of personal hearing on March 19, 2025. On the said date, the AR of the Noticee appeared before me and reiterated the submissions made *vide* the Noticee’s letter dated February 08, 2025.
8. The contentions raised in the Noticee’s written submissions and those made during the personal hearing are summarised below.
 - 8.1. The Noticee has already faced regulatory action and a penalty against the activities mentioned at para 11 of the Enquiry report (assuring profits, violation of SEBI circular) and hence no other direction shall be imposed upon him.
 - 8.2. The Noticee has submitted that he has not violated provisions of advertisement circular dated April 05, 2023 as he has not mentioned the past performance

anywhere. As per clause (c)(x) of the said circular, RAs are not allowed to state accuracy of their levels till it is achieved. The accuracy levels stated by the noticee over a website is only after the achievement of target returns. Moreover, the Noticee has not shown past performance or result of any specific security or his research rather he has just stated the accuracy of his research and all the requisite disclaimers as required under the said circular are mentioned upon his website. The testimonials mentioned upon the website were not fake as it were received from the Noticee's clients. Further, post the inspection, the Noticee immediately removed such contents from its website.

8.3. The contention of SEBI in paragraphs 18 and 19 of the Enquiry report (profit calculation provided to the clients by sales representatives) are denied in its entirety as the sheet upon which the SEBI has relied upon is an internal lead generation sheet, not a client facing document, which is maintained by the Noticee's employees and hence the said allegation lacks merit as it is unsupported by any credible evidence and also it does not constitute any actual promise or assurance of guaranteed returns.

8.4. The Noticee has reiterated that he has not assured/ guaranteed returns rather he has demonstrated that the clients can earn from their trading activities in the securities market. Further, SEBI in an order passed by the WTM in the matter of "GRS Solution" had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to the dismissal of such allegations. In order to strengthen the compliance framework, the Noticee has stopped using any of such terms in its client communication to avoid any concern/ dispute.

8.5. With respect to the observations at paragraphs 24 to 28 of the Enquiry report (allegations of fraud), the Noticee has submitted that the DA has accepted the Noticee's argument and has removed the violations of PFUTP regulations.

8.6. During the hearing, the AR was specifically enquired about the statements made by the Noticee's sales representatives to the clients/ prospective clients. The AR insisted that the statements did not mislead, assure profits or cause inducement. Further, he stated that the returns that can be generated from the Noticee's services were provided in response to clients' queries.

- 8.7.** With respect to the allegation regarding return assurances on the Noticee's website, the Noticee has stated that the website's homepage clearly displays a prominent disclaimer on the top of the page, written in layman's terms for easy comprehension and in easy-to-understand language, which explicitly states: *"Investments in the stock market are inherently risky. We do not offer guaranteed profits, fixed returns, or any assurances of success. Trading can result in partial or complete loss of capital. Clients must carefully review our legal disclaimer, terms and conditions, refund policy, and other company policies before subscribing to any NiftyPro Trading Research services, including research alerts."*
- 8.8.** SEBI appears to have overlooked this comprehensive disclaimer at the top of the website's homepage and focused instead on content that doesn't make explicit guarantees. The said content highlights the effectiveness and potential benefits of the Noticee's services. Such marketing language is a standard practice within the service industry. It is important to note that the said content is entirely factual. The Noticee showcases his 90% accuracy rate, the precision of his intraday calls, his team's expertise, and client testimonials to demonstrate his capabilities. The Noticee maintains that his website does not make any assurances of profit or return. However, in the spirit of cooperation and full compliance with SEBI's directives in the inspection report, the Noticee has removed the aforesaid content from its homepage.
- 8.9.** With respect to the allegation that his sales representatives provided expected returns from trading based on his recommendations, the Noticee asserts that this allegation lacks merit and is unsupported by any credible evidence as the sheet upon which SEBI has relied upon is an internal lead generation sheet and not a client facing document. It does not constitute any actual promise or assurance of guaranteed returns.
- 8.10.** With respect to the allegation that the sales representatives of the Noticee indulged in assuring profits from trading based on their recommendations, the Noticee has reiterated that he has not assured/ guaranteed returns rather he has demonstrated that the clients can earn from their trading activities in the securities market.

8.11. The Noticee had stated that the complainant can earn similar profits/ fees can be recovered, where “can” denoted possibility, not certainty. It was not claimed that there would definitely be profit which is definitely dependent upon many factors. This aligns with general understanding that investors seek profit in inherently risk stock market. SEBI itself in an order passed by Whole Time Member in the matter of “GRS Solution” had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to dismissal of such allegations.

8.12. The call recordings referred to by SEBI also includes a welcome/ verification call done by the team wherein they do inform the clients/ investors regarding the risks involved in the market and also there is no assurance of any guaranteed return in the securities market. Some of the statements made by the staff of the Noticee to the investors paraphrased from the said welcome call recordings are given below for illustration:

- a) *I am not saying that there will be no loss through our research, there may be profit or loss in the securities market, depending upon market conditions.*
- b) *We do not have 100% accuracy.*
- c) *There is no assurance of returns.*

8.13. The Noticee has not guaranteed/ assured returns rather he had made his clients aware regarding the inherent risks involved in the securities market which is evidenced from the user consent form, terms and conditions (provided and accepted by all clients) and relevant website screenshots.

8.14. The Noticee’s website explicitly outlines the inherent risks associated with stock market investments and the absence of guaranteed returns as the following disclosures/ disclaimers are made in several pages:

- a) *Trading in securities market is inherently risky and the users agree to take complete and full responsibility for the outcomes of all trading decisions that they make, including but not limited to loss of capital.*
- b) *We do not provide any assurance or guarantee of profit or returns with any of our services.*

c) *Investment in the stock market is subject to market risk, we do not offer any guaranteed profit services or fixed returns services, we do not provide any assurance or guarantee of profit or returns with any of our services. Trading in the Stock Market may result in partial or complete loss of gains as well as initial capital. Before taking our research alerts services & any services of NiftyPro Trading Research, client should read careful the Disclaimer. Legal disclaimer, terms and conditions, refund policy and other policies of our company.*

8.15. The Noticee has a practice to execute the user consent form from all of the clients wherein clients acknowledge that:

- a. *I understand and accept that trading is a risky activity that involves the risk of loss of partial or complete capital and that there is no guarantee of profits or returns after subscribing to any of NiftyPro Trading Research alerts services.*
- b. *I understand and agree that NiftyPro Trading Research and or its owner/ proprietor/managers/ employees/ associates do not provide any assurance or guarantee of accuracy or consistency of any our research alerts/ service.*
- c. *I confirm and accept that I do not expect a fixed return or guaranteed return from the research alerts service subscribed by me and I fully understand that I can/ might lose your partial or entire capital in trading & investing by referring to research services/ reports/ alerts of NiftyPro Trading Research.*
- d. *I declare that NiftyPro Trading Research and its proprietor/ Owner/ employees/ associates have not guaranteed me or assured me any returns or profits by trading and investing in the stock.*

8.16. Till date none of the clients/ investors have ever alleged that he has been lured by the Noticee or the Noticee had promised him assured returns, which supports the claim of the Noticee of not providing any kind of assured returns.

8.17. With regard to the allegation that the Noticee has committed fraud and has violated the PFUTP Regulations, the Noticee has stated that if his intention was to defraud the clients then he would not have opted for SEBI registration

and followed the requisite applicable compliances. Based on the definition of fraud under regulation 2(c) of PFUTP Regulations, it can be construed that the definition is very wide and general in nature. The definition of “fraud” alone does not bring an act within the purview of PFUTP Regulations. There has to be “dealing in securities” as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee has committed fraud while “dealing in security” as contemplated under the PFUTP Regulations.

8.18. The Noticee also places reliance on the following decisions of SEBI: Star World Research and Niveshicon Investment Advisor.

8.19. No evidence on record has been established by SEBI which evidences any fraud committed by the Noticee. In this regard, the noticee refers to the Order of Hon’ble SAT dated January 04, 2022 in the matter of Ms. Suhanika Chourey, wherein the findings of PFUTP violations were set aside as there was no evidence brought out on record.

8.20. By following the principle of doctrine of Stare Decisis, SEBI shall consider its judgements issued under similar issues or facts and such allegations shall be removed upon the Noticee.

8.21. SEBI in its order in the matter of Star World Research and Niveshicon investment advisor has stated that for construing the definition of fraud, the fraud shall be committed while “dealing in security” and in absence of that the acts will not fall within the ambit of PFUTP Regulations. In the said orders, SEBI dropped the allegation of PFUTP for the following acts: selling products meant for High-risk category clients to clients having medium risk profile, charging of unfair, unreasonable and exorbitant fee from the clients, promising/ assuring unrealistic return to clients. By following the principle of stare decisis, the PFUTP violations shall be removed upon from the Noticee as the alleged violations, if established, have not been committed while dealing in security and also no material evidence has been established in this regard.

C. CONSIDERATION OF ISSUES AND FINDINGS

9. I have perused the Enquiry Report, SCN, replies of the Noticee and other material available on record. After considering the allegations levelled against the Noticee in the instant matter, the following issues arise for consideration:

9.1. Issue no. 1: Whether the Noticee has violated the provisions of RA Regulations and SEBI Circular?

9.2. Issue no. 2: Whether the Noticee has violated provisions of PFUTP Regulations read with sections 12A(a), (b) and (c) of the SEBI Act?

10. Before moving forward to examine the charges, it is necessary to mention the relevant legal provisions and the same are reproduced below for reference:

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

[Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

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

.....

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

.....

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

.....

(s) mis-selling of securities or services relating to securities market;

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

- (i) knowingly making a false or misleading statement, or*
- (ii) knowingly concealing or omitting material facts, or*
- (iii) knowingly concealing the associated risk, or*
- (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer;*

SEBI Act, 1992:

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any*

manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;

RA Regulations:

General responsibility.

(2) Research analyst or research entity shall abide by Code of Conduct as specified in Third Schedule.

THIRD SCHEDULE

[See sub-regulation (2) of regulation 24]

Code of Conduct for Research Analyst

1. Honesty and Good Faith

Research analyst or research entity shall act honestly and in good faith.

2. Diligence

Research analyst or research entity shall act with due skill, care and diligence and shall ensure that the research report is prepared after thorough analysis.

i. Professional Standard

Research analyst or research entity or its employees engaged in research analysis shall observe high professional standard while preparing research report.

ii. Compliance

Research analyst or research entity shall comply with all regulatory requirements applicable to the conduct of its business activities.

iii. Responsibility of senior management

The senior management of research analyst or research entity shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures.

SEBI circular SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023:

c. Prohibitions in the advertisement:

The advertisement shall not contain:

- i. Anything which is prohibited for publication under the law.*
 - ii. Statements which are false, misleading, biased or deceptive, based on assumptions or projections.*
 - iii. Any misleading or deceptive testimonials.*
 - iv. Statements which, directly or by implication or by omission, may mislead the investor.*
 - v. Any statement likely to be misunderstood or likely to disguise the significance of the same or any other statement contained in the advertisement.*
 - vi. Any statement designed to exploit the lack of experience or knowledge of the investors.*
 - vii. Any statement that is exaggerated or is inconsistent with or unrelated to the nature and risk and return profile of the product.*
 - viii. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may distract the investors.*
 - ix. Reference to any report, analysis, or service as free, unless it actually is free and without condition or obligation.*
 - x. Any promise or guarantee of assured or risk free return to the investors.*
- The advertisement shall not imply any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice/recommendation of research report is risk-free and/or not susceptible to market risks and/or that it can generate returns with any level of assurance.*

- xi. Any statement which directly or indirectly discredits other advertisements or intermediaries or makes unfair comparisons or ascribes any qualitative advantage over other intermediaries directly or indirectly.*
- xii. Reference to past performance of the IA/RA.*
- xiii. Superlative terms such as “Best”, “No. 1”, Top Adviser/Research Analyst, “Leading”, “One of the best amongst market leaders”, etc. so as to provide any endorsement of quality or standing of the IA/RA. However, factual details of awards received by the IA/RA from independent organizations may be included.*
- xiv. Advertisements shall not include SEBI Logo.*

Issue no. 1: Whether the Noticee has violated the provisions of RA Regulations and SEBI Circular?

11. During the course of inspection, it was observed that the Noticee’s website ‘<https://www.niftypro.in>’ *inter alia* displayed the following statements on the homepage of the website.

“Best Market Tips

We maintain upto 90% accuracy

accurate intraday calls in all segments

Under the section 'Why Choose Us?

.....We can ensure you that we have the expertise and skills to find stocks with exceptional potential

.....You can trade and invest based on our recommendations to ensure that you generate consistent profits across markets irrespective of the volatility....

Testimonials: *“They helped me in earning excellent returns from the Futures market. It has been 3 months now and I've been able to earn consistently unexpected returns”-Testimonial of K. Mahadevan.*

Under Request a Free Call Back: *Book your profit today by research based recommendations.”*

12. Based on the sample call recordings available on the email of compliance@niftypro.in, it was observed that the sales representatives of the Noticee provided expected returns from trading based on the Noticee's recommendations. Some of the statements made by the sales representatives of the Noticee assuring returns paraphrased from the sample call recordings are given below:

“with a capital of ₹50,000/-, profit of ₹8,000/- to ₹10,000/-per day from single level can be generated and ₹18,000/-to ₹20,000/ profit can be generated from 2 to 3 levels per day”

“the RA fees can be recovered in 2 to 3 days of trading based on their recommendations”

“reference to profit making Demo stock recommendation are mentioned assuring future returns in similar fashion”

13. It has been alleged that the noticee claimed that its stock recommendations were accurate, assured profits and used misleading testimonials on his website. It has been further alleged that the Noticee and his representatives engaged in mis-selling research services by assuring profits and making specific claims of expected returns from trading based on their recommendations. I note that as per the SEBI circular on Advertisement code for RA, clause C (iii) prohibits usage of misleading testimonials, Clause C (x) prohibits any implied assurance of returns or percentage accuracy or that it can generate returns with any level of assurance and clause C (xiii) prohibits usage of superlative terms that provide any endorsement of quality. Further, according to PFUTP Regulations, Regulations 4(2)(k) deals with disseminating false information designed to influence the decision of investors dealing in securities, Regulation 4(2)(o) deals with fraudulent inducement of any person to deal in securities with the objective of enhancing his income and Regulation 4 (2)(s) deals with mis-selling of services by knowingly making false or misleading statement.

I. Usage of prohibited words

- 14.** The DA has concluded that the Noticee's website uses the words 'best' and 'accurate', which are prohibited as per the SEBI Circular. I note that the Noticee has not made any submission in respect of this allegation. As mentioned earlier, Clause C (xiii) of the SEBI circular specifically prohibits the usage of superlative terms which provide endorsement of quality such as "*best*", "*No. 1*", "*leading*" etc. The Noticee has been observed to have used the term "*best*" on his website in clear violation of SEBI Circular. Even though the word "accurate" is not a superlative term, I find that the said word endorses the quality of the Noticee's services and is accordingly prohibited under the SEBI Circular.

II. Misleading testimonials

- 15.** The DA had concluded that the testimonial displayed on the noticee's website were misleading and deceptive to investors. The Noticee has argued that the testimonials on his website were not fake. In this regard, I note that the allegation against the Noticee is that the testimonials on its website were misleading and not that they were false. Therefore, this submission of the Noticee is misplaced. The testimonial on the Noticee's website read as follows: "*They helped me in earning excellent returns from the Futures market. It has been 3 months now and I've been able to earn consistently unexpected returns.*" As mentioned earlier, the SEBI Circular *inter alia* prohibits usage of misleading or deceptive testimonials. Even if the testimonial used is factually true, such statements are misleading and deceptive to investors as investment returns in securities market are subject to volatility and uncertainty.

III. Citing accuracy levels

- 16.** The Noticee has argued that the SEBI circular permits stating accuracy levels after achievement. Further, he has stated that the content is factual and such marketing language is a standard industry practice. I note that clause c (x) of the SEBI Circular read as "*The advertisement shall not imply any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature...*" (emphasis supplied). I note that the

Noticee has incorrectly read the circular prohibition on 'service provision till achievement of target returns' to argue that accuracy levels can be stated after achievement. The mandate in the SEBI circular is clear – advertisements shall not contain 'percentage accuracy'. Therefore, this contention of the Noticee is patently erroneous. Moreover, when the SEBI circular clearly prescribes certain prohibitions in advertisement of RAs, the Noticee cannot circumvent that by claiming its advertisement is factual or that he follows industry practice.

17. The DA had concluded that the Noticee has made reference to its past performance by mentioning '90% accuracy' on its website. In response to the SCN, the Noticee has submitted that he has not mentioned his past performance and only accuracy levels were stated. Though both past performance and accuracy level rely on historical data, accuracy level refers to how often the predictions were right and past performance refers to how much returns were made on those predictions. Accordingly, I am inclined to agree with the submission of the Noticee that he had not mentioned his past performance on the website. Nevertheless, the SEBI Circular prohibits mentioning accuracy levels and the Noticee has admitted to mentioning the same.

IV. Promising assured returns - website

18. The Noticee had submitted that the homepage of the Noticee's website displays a prominent disclaimer regarding stock market risks and that such marketing language is a standard industry practice. Further, the Noticee contended that the content on his website was factual. The DA did not agree with the said submissions and concluded that the statements implying assured returns were misleading and deceptive. The Noticee has again contended that the website displayed a disclaimer regarding risks involved in securities markets and that the content on the website did not make explicit guarantee. I note that the website of the Noticee displayed statements such as "*You can trade and invest based on our recommendations to ensure that you generate consistent profits across markets irrespective of the volatility*". Even if there are disclaimers, its conduct of making such statements act as an implied assurance that clients will make profit by acting

upon the recommendation of the Noticee. The abovementioned clause of SEBI circular also makes it amply clear that implying assured returns is prohibited and therefore, the argument that the content on the website did not make explicit guarantee is without merit.

V. Providing expected returns

- 19.** The SCN alleges that the Noticee's sales representatives made specific claims of expected returns to potential clients. Before the DA, the Noticee contended that there is no credible evidence to show that the Noticee's sale representatives provided expected returns to its clients. The DA found that the documentary evidence also reveals that the sales representative provided the Noticee's clients details regarding expected returns based on Noticee's recommendations.
- 20.** In response to the SCN, the Noticee has once again argued that the document relied upon by SEBI, to support the aforesaid allegation, is an internal lead generation sheet maintained by the noticee's employees and not a client facing one. Accordingly, he has contended that it is not a credible evidence for allegation of promise of assured returns. On perusal of the lead generation sheet, I note that it is a record of calls made by Noticee's representatives to potential clients. The observations recorded in the said document show that claims of expected returns were in fact made to the prospective clients. A sample of one such observation from the said document is given below: *"Call opening, informed about share market, agent informed about how our compnay works, cm said that please say that what capital is required for trdaing, agent explained that if you bring 50k capital, then I will try to give you 8-10k profit in our trade, cm said okay i wanr to trade, call closed"*. Therefore, the contention of the Noticee that the lead generation sheet is not a credible evidence is not tenable. In any case, the Noticee in its submission has also admitted to making claims of expected returns by arguing that it had only mentioned the possibility of making such returns.

VI. Promising assured returns – Sales representative

- 21.** With respect to the allegation of Noticee's sales representatives assuring profits, the Noticee had contented before the DA that the clients were not assured returns rather they were demonstrated the possibility of earning similar profits. The DA concluded that the statements made by the Noticee's representatives were in the nature of assuring profits.
- 22.** In this regard, I note that in one specific instance, the sales representative of the Noticee made a claim to one of the potential clients that with a capital of INR 50,000, a profit of INR 8,000 to 10,000 per day can be made from a single level i.e., a return of 16-20% in one day, and a profit of INR 18,000 to 20,000 per day can be made from 2-3 levels, i.e., a return of 36-40% in one day. The very act of quantifying such high return indicates that the clients of the Noticee were given the impression that such returns could be achieved through the Noticee's services. The submission that the usage of "can" indicates the possibility of earning such profits and does not assure profit is contrived and lacks merit. In this regard, the Noticee has relied on SEBI Orders in the matters of GRS Solution dated February 08, 2022 and submitted that similar statements were held to be marketing gimmicks rather than actual promise of assured returns. In my view, the statements in the Noticee's website and the statements made by the Noticees' sales representatives are not comparable with the statements used in the aforesaid case. The said order concluded that usage of phrases like "*high return on investment*", "*high accurate 1-2 calls*", "*maximize profit*" and "*promise of high success rates*" are not assurance of returns. However, in the instant case, the Noticee has used definitive statements such as "*the RA fees can be recovered in 2 to 3 days of trading based on their recommendations*" and "*with a capital of ₹50,000/-, profit of ₹8,000/- to ₹10,000/-per day from single level can be generated and ₹18,000/-to ₹20,000/ profit can be generated from 2 to 3 levels per day*" in its communication with its clients. Therefore, the present case is materially different from the case relied upon by the noticee.
- 23.** It is well-established that returns in securities markets are inherently volatile and unpredictable, particularly over the short term. As a registered RA, the Noticee is

required to convey the fundamental principle of the securities market that all investments in the securities market are subject to market risks, and that the returns can never be assured, regardless of the amount or duration of the investment. The claims made by the sales representative of the Noticee with respect to high returns can only be seen as acts of enticing the client to avail the services of the Noticee.

24. The Noticee has submitted that the clients of the Noticee were made aware of the inherent risks involved in securities market through terms and conditions in user consent form executed by its clients. Further, he has stated that the call recordings referred to by SEBI also includes a verification call wherein the clients were informed regarding the risks involved in the securities market. In this regard, I note that it is a regulatory requirement for SEBI registered Research Analyst to inform clients about the potential risks related to investing in securities market and complying with that does not enable the Noticee to engage in prohibited acts. Further, a disclaimer, no matter how prominent, cannot offset these prohibitions. Accordingly, these contentions are rejected.

25. In view of the observations made above, I find that the Noticee has violated clauses 1, 2, 6, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations and clause C of SEBI Circular.

Issue no. 2: Whether the Noticee has violated provisions of PFUTP Regulations read with sections 12A(a), (b) and (c) of the SEBI Act?

26. I note that the DA has concluded that the conduct of the Noticee (making promise of assured returns, using misleading testimonial and providing expected returns to clients) is in violation of SEBI circular and RA Regulations, however, there is not enough material on record to show violation of PFUTP Regulations. Specifically, the DA has concluded that no evidence of inducing another person to “deal in securities” was available. The Noticee has relied on SEBI Orders in the matters of Star World Research and Niveshicon investment advisor and claimed that the

allegation of PFUTP Regulations violation for *inter alia* promising unrealistic returns was dropped due to absence of “dealing in securities” in the said cases.

27. In this regard, I note that the definition of ‘fraud’ under Regulation 2(c) of the PFUTP Regulations, 2003 is as follows:

“ ‘fraud’ includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behavior by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price. And “fraudulent” shall be construed accordingly;

...”

28. The Hon’ble Supreme Court, while interpreting the aforesaid definition in *SEBI Vs. Kanaiyalal Baldevbhai Patel* [(2017) 15 SCC 1], held that to constitute fraud under the above definition, only “inducement” while dealing in securities is required.

29. I also note that the term ‘dealing in securities’ has been defined under Regulation 2(b) of the PFUTP Regulations, 2003 is as follows:

“2(b) “dealing in securities” includes:

- (i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;*
- (ii) such acts which may be knowingly designed to influence the decision of investors in securities; and*
- (iii) any act of providing assistance to carry out the aforementioned acts.”*

30. The definition of ‘dealing in securities’ also includes the acts which are designed to influence investors’ decisions. Therefore, rendering research analyst service which influences investors to invest in securities also constitute ‘dealing in securities’. The definition of ‘dealing in securities’ was amended w.e.f. February 01, 2019 based on the recommendation of the Fair Market Conduct Committee in its report dated August 08, 2018. The Committee had observed:

“Fraudulent, manipulative or unfair trade practices may be carried out with the aid and assistance of persons other than the parties who are transacting in the securities market, including intermediaries who may have contributed to such dealings. The prohibition of fraudulent and unfair trade practices is in the context of dealing in securities. Hence, the definition of ‘dealing in securities’ should also include those who assist in and indeed often orchestrate or control the dealings in securities, or those who knowingly influence the decisions to invest in securities.”

31. The above observations in the Report of Committee on Fair Market Conduct clearly indicate that the definition of ‘dealing in securities’ under Regulation 2(b) of the PFUTP Regulations, 2003 is intended to cover acts of intermediaries, such as the Noticee, which are designed to influence investment decisions. Accordingly, I find that rendering research analyst service amounts to ‘dealing in securities’. A similar view was taken in the SEBI Order dated February 28, 2023 in the matter of enquiry proceedings against Niveshicon Investment Advisory.

32. The Noticee has also relied on the Order of the Hon’ble SAT in the matter of Suhanika Chourey (supra) wherein the findings of PFUTP violations were set aside as there was no evidence brought out on record. In the instant case, contents on

the website of the Noticee, call recordings, Noticee's own record of calls with potential clients are available on record to support the allegation of promising assured returns. Therefore, the said decision relied on by the Noticee does not aid his case.

33.As explained in the foregoing paragraphs, I conclude that irrespective of the terminology used by the Noticee, the RA's conduct clearly reflects an attempt to entice clients with the promise of high and quick returns, implying assured returns on availing its services, when he knew that the same were misleading.

34.Therefore, I find that the Noticee has also violated regulations 3 (a), (b), (c) and (d) and regulations 4(1), 4(2)(k), (o) and (s) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act.

D. CONCLUSION

35.In the instant matter, as noted in the preceding paragraphs, the Noticee has violated provisions of SEBI Circular, RA Regulations and PFUTP Regulations by using expressly prohibited words, featuring misleading testimonials, citing accuracy level, providing expected returns and implying assured returns. Based on the findings of violations of SEBI Circular and RA Regulations, the DA has recommended that the Noticee may be issued a regulatory censure. I note that the Adjudicating Officer has already imposed monetary penalty for the same violations which are a part of the instant proceedings and the Noticee has paid the penalty. I acknowledge that these are independent proceedings. However, any punitive/remedial directions already ordered in the context of the violations need to be considered while passing directions to ensure proportionality in punishment. I note that these proceedings were initiated pursuant to thematic inspection of the Noticee. One of the object of such inspections is to correct defaults. The Noticee has submitted that his sale representatives have ceased the usage of impugned terms in its client communications. I also note that the impugned contents on the Noticee's website have been removed. There is no material available on record evidencing investor complaints against the Noticee in the context of the allegations

in the SCN. In all, I note that the scale and consequence of the impugned violation of PFUTP Regulations is not large enough to warrant stringent directions. Considering all of the above, in the interest of proportionality, I agree with the measure recommended by the DA.

E. ORDER:

36. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 of the Intermediaries Regulations, hereby issue regulatory censure against the Noticee.

37. This Order shall come into force with immediate effect.

38. A copy of this Order shall be served upon the Noticee.

39. A copy of this Order shall also be served on BSE Limited (being Research Analyst Administration and Supervisory Body) for its information and record.

Sd/-

ANANTH NARAYAN G.

DATE: MAY 14, 2025

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA