BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. BD/NR/2020-21/8157-8163

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,1995

In respect of

1. Adel Landmarks Ltd., *(Earlier known as Era Landmarks Ltd.,)* *(PAN: AABCE4642C)* B-39, Ground Floor Friends Colony (West) New Delhi – 110065.	2. Rakesh Kumar Gupta *(PAN: AAAPG4298A)* J-272, Sarita Vihar New Delhi – 110076.
3. Sumit Bharana *(PAN: AGYPB3210A)* C-146, 1st Floor Sarvodaya Enclave New Delhi – 110017.	4. Arvind Kumar Birla *(PAN: ASDPK2245G)* 254, AGCR Enclave Anand Vihar Delhi – 110092.
5. Rashmi Bharana *(PAN: AHCPB9343C)* C-146, 1st Floor Sarvodaya Enclave New Delhi – 110017.	6. Sanjay Chawla *(PAN: AAGPC0832Q)* 1303, Amber Court-I, Essel Tower M G Road Gurgaon – 122001.
7. Manisha Bharana *(PAN: BCGPB5514B)* C-146, 1st Floor Sarvodaya Enclave New Delhi – 110017.	

(The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees")

In the matter of Adel Landmarks Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received complaints against. Adel Landmarks Ltd., *(formerly known as Era Landmarks Limited)* (hereinafter referred to as "Adel" / "Noticee 1" / Company) regarding the scheme launched by it for pre-booking of plots in

Gurgaon. The complainants alleged that, vide the said scheme, Adel had mobilized crores of rupees from investors and failed to refund the same within the stipulated time. The complainants also forwarded copies of the agreements entered into along with the payment receipts issued by Adel.

2. Pursuant to examination of the documents and other records submitted by the Company as well as the complainants, it was found that the Company was engaged in fund mobilizing activity from public, which is in the nature of a ‘collective investment scheme’ as defined in Section 11AA of the SEBI Act. It was also found that Adel has not obtained any certificate of registration under the SEBI (Collective Investment Schemes) Regulations, 1999 for its existing fund mobilizing activity from the public, under the instant 'Scheme' offered by it. Accordingly, it was observed that Adel (Noticee 1) and its Directors viz., Rakesh Kumar Gupta (Noticee 2), Sumit Bharana (Noticee 3), Arvind Kumar Birla (Noticee 4), Rashmi Bharana (Noticee 5), Sanjay Chawla (Noticee 6) and Manisha Bharana (Noticee 7) had violated the provisions of Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations.

APPOINTMENT OF ADJUDICATION OFFICER

3. Based on the findings of the examination, SEBI initiated Adjudication proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated September 5, 2019 under Section 19 of SEBI Act read with Sub-section 1 of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **“***SEBI Adjudication Rules”)* to inquire into and adjudge under Section 15D(a) of SEBI Act for the alleged violation of the provisions of Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations, by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (SCN) bearing ref. no., EAD-7/BD/BM/2020 dated January 28, 2020 was served on all the Noticees under Rule 4(1) of

the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15D(a) of the SEBI Act, for the violation alleged to have been committed by them.

5. The Noticees 2, 3, 5, 6 and 7 vide a common letter dated February 21, 2020 while submitting preliminary reply sought time for furnishing a detailed reply, which was acceded to and accordingly vide email dated March 4, 2020 it was informed to the Noticees to submit their reply by March 13, 2020, besides providing with an opportunity of personal hearing on March 16, 2020, which was subsequently adjourned to March 24, 2020 pursuant to a request made by the Authorized Representative of the Noticees. However, due to outbreak of Covid-19 pandemic, the hearing scheduled on March 24, 2020 could not be conducted. Further, I note that the Noticee 6 vide letter dated NIL received on March 9, 2020 submitted his reply. It is also noted that on behalf of the Noticees 1 & 4, the Authorized Representative vide email dated March 21, 2020 sought extension of time till April 30, 2020, which was deemed to have been accorded. However, it is noted that the Noticees did not furnish their reply.

6. Thereafter, vide email dated June 1, 2020, sent through digitally signed email in terms of Rule 7 (b) of SEBI Adjudication Rules, all the Noticees were given final opportunity to submit their replies by June 15, 2020, besides providing with another opportunity of personal hearing scheduled on June 18, 2020. I note that the email did not bounce. I note that vide email dated June 16, 2020, the Noticees 2, 3, 5, 6 and 7 filed a common reply dated June 10, 2020. On the scheduled date of hearing i.e., June 18, 2020 Mr. Manish Batra, Advocate *(Authorised Representative)* representing all the Noticees appeared for the hearing through WhatsApp video call. The Authorised Representative sought extension of time till June 26, 2020 to make additional submissions, besides seeking another opportunity of personal hearing on June 26, 2020, which was acceded to. The Authorized Representative appeared for hearing on June 26, 2020 through WhatsApp video call and further sought extension of time to make additional submissions, for which time has been granted till June 29, 2020. It was

clearly informed to the Authorized Representative that if no reply is furnished by June 29, 2020, the matter shall be decided based on the documents, which are on record.

7. I note that the Noticee 2 vide email dated June 28, 2020 furnished his reply. I also note that on behalf of all the Noticees, the Noticee 3 submitted a reply on June 29, 2020. The Authorized Representative further vide email dated June 29, 2020 sought an opportunity for hearing, which was not granted since the matter has been heard twice and that the documents & the replies received from the Noticees are sufficient for me to decide the matter. Accordingly, I am of the view that no prejudice has been caused to the Noticees in this regard.

8. The replies furnished by the Noticees 2, 3, 5, 6 and 7 vide letter dated February 21, 2020 are summarized hereunder:

(a) Corporate Insolvency Resolution Process has been initiated against the Company in pursuance of the orders of Principal Bench of the Hon'ble National Company Law Tribunal (NCLT);
(b) The Board of Directors of the Company stood suspended
(c) NCLT vide order dated December 05, 2018 declared a moratorium in terms of section 14 of the Insolvency and Bankruptcy Code.
(d) It is therefore submitted that the Adjudication proceedings are liable to be dropped in absence of leave of Hon'ble NCLT.
(e) The Noticee 1 was involved in activities which in no way could be termed as CIS as defined in Section 11AA (2) of the SEBI Act.
(f) The Noticee 1 is a real estate developer and was in process of developing the project at Sector-103, Gurgaon and in this connection the Noticee 1 had also purchased land and all the receipts for the purpose of allotment of residential plots in this project.
(g) From the enclosed agreement dated 11.11.2011to the SCN, it is submitted that the applicant had applied for a plot measuring 300 sq.yd. as reflected in Para no. 3 of the agreement and also in the application form. The said customer of the Noticee 1 had made payments to the tune of Rs. 55.80 lacs which is part of the sale consideration of the plot as reflected in the payment plan in Para 1 of the agreement. None of the terms and conditions of the said agreement can be remotely construed as terms and conditions of a CIS rather there normal terms and conditions entered into between developer/builder and its prospective customers. The inference drawn by SEBI is absolutely wrong that these were CIS.

(h) *The inference drawn by WTM, SEBI dated October 7, 2015 was absolutely wrong and contrary to the material on record and the normal customs of the trade of sale and purchase of land/plots/property.*

(i) *The said Order of the Hon'ble WTM, SEBI was challenged by the Noticees before the Hon'ble Securities Appellate Tribunal (SAT) vide Appeal No. 520/2015. That the said Appeal of the Noticees was duly considered by the Hon'ble SAT and considering the fact that the Company has not floated any CIS and the Noticee 1 had partly paid the amount to the investors and the Noticee 1 was ready and willing to refund the balance amount to its investors without prejudice.*

(j) *In pursuance to the directions of Hon'ble SAT dated December 7, 2017, the Noticees filed representation before SEBI on December 14, 2018, wherein it was disclosed that the total amount received from the plot buyers was Rs. 51,03,44,185/- and the Company had refund the amount of Rs 64,90,34,609/-*

(k) *Thereafter, Hon'ble WTM, SEBI vide Order dated August 19, 2019 directed the Noticees to effect a newspaper publication in one widely circulated newspapers (English and Hindi) inviting complaints / claims from any investor in respect of the CIS within a period of one month from the date of the Order .*

(l) *Accordingly, the Noticees 2 to 7 have complied with the said Order and also informed about the two complaints received after the publication and thus sent a compliance letter dated November 22, 2019 to SEBI in terms of the Order dated August 19 2019.*

(m) *Thus, the Noticees have complied with each and every direction issued by the Hon'ble SAT in its Order dated December 7, 2017 and subsequent directions issued by SEBI from time to time in this regard.*

9. The reply submitted by the Noticee 6 vide letter dated NIL received on March 9, 2020 is summarized hereunder:

(a) *I am/was not a Promoter or shareholder of the Company or Era Group or any Companies of Era group. Neither do/did I have any direct or indirect beneficial ownership or stake I the Company or any of Era Group of Companies.*

(b) *I was appointed as Director of the Company for the period commencing from January 1, 2010 to October 31, 2012 (copy of Form 32 towards resignation on October 31, 2012 is attached for ready reference) without any control or stake/beneficial interest in the Company.*

(c) *The Company was run by and was under the control of the Promoters / Shareholders.*

(d) *As an employee of the Company, even though I was appointed as Director, my role was restricted to handling the technical matters related to projects under development and I was not at all involved with the land related matters, financial, approvals etc., I specifically did not have any involvement in such an alleged CIS scheme.*

10. The replies furnished by the Noticees 2, 3, 5, 6 and 7 vide letter dated June 10, 2020 are summarized hereunder:

(a) *Reiterated the earlier submissions made vide letter dated February 21, 2020.*
(b) *As of now, the two complaints received by the Noticees in terms of the publication have been settled in full and one more claim has also been settled.*
(c) *Complied with the Directions issued by the Hon'ble WTM vide Order dated August 19, 2019.*
(d) *That the Noticees have been always willing to settle with the complainants and has always complied with each and every directions issued by SEBI from time to time.*

11. The reply furnished by the Noticee 2 (Rakesh Kumar Gupta) vide email dated June 28, 2020 is summarized hereunder:

(a) *That I am not the present Director of Adel;*
(b) *I was not even the Director of Adel when SEBI initiated preliminary inquiry vide letter dated 10/06/2013;*
(c) *I jointed the Noticee Company on 20/02/2014 as a Director much later than the initiation of probe by SEBI and remained as a Director till 28/05/2015;*
(d) *That when the alleged CIS started, I was not even appointed as a Director;*
(e) *That, I was not a Director when SEBI passed final Order on October 7, 2015;*
(f) *During my tenure as a Director, there was no such activities of collecting such fund was initiated or brought to my knowledge and further no such resolution to that effect was ever brought into my knowledge;*
(g) *I was/is not the Promoter Director nor anyway related to any of the Promoter Directors of the Company;*

12. The reply furnished by the Noticee 3 (Sumit Bharana) on behalf of all the Noticees vide email dated June 29, 2020 is summarized hereunder. The earlier submissions made by the Noticees in this reply are not reiterated for the sake of repetition:

(a) *It is submitted that the Noticee 1 had categorically explained that the statutory approvals (License) which were applied in 2011 were to be received and therefore, earmarking of plots etc., was to be carried out in accordance with the approvals / sanctions by the state authorities. If the requisite approvals stated above could have been received, the absolute title in the plots of land would have moved from the Noticee No. 1 to the home buyers in the exact terms of a sale of land as defined under the Transfer of Property Act, 1882 read with the Indian Contract Act, 1872,* *which regulate the transactions/contracts pertaining to sale and purchase of immovable property;*

(b) That SEBI failed to appreciate that the Companies Act, 2013 when read with the Transfer of Property Act, 1882 and the Indian Contract Act, 1872 would imply that the objects for which a company has been incorporated should be allowed to be realised to their fullest extent and that the provisions of Section 11AA of the SEBI Act, 1992 cannot be extended to such an extent that ordinary business transactions undertaken bonafidely by corporate entities are curbed.

(c) It is submitted that the Noticees had specifically stated several time in their replies that the requisite sanctions / approvals for development of residential township at Dwarka Expressway, Gurgaon were already applied for and on behalf of the Noticee 1 much before acceptance of advance sale consideration from the buyers. The Noticees had already paid for the land Rs. 220 crore 43 lacs before taking the first booking/investment from the customer. Total value of the consideration of the land Rs. 393.4 crore against which we had taken only Rs.51.03 crore from the customer against the land.

(d) SEBI failed to appreciate that 'future land' referred to in the agreements relied upon by SEBI was land already purchased by the associates / subsidiaries / group companies of the Noticee 1 but which was not booked / recorded in the books of the Noticee 1 for technical and / or commercial reasons including the applicable land ceiling laws. As the land was already purchased by Noticee 1 through its associates / subsidiaries / group companies, the expression "future land" meant "future licensed and developed land".

(e) SEBI failed to appreciate that the limited development being mentioned in the agreements was demarcation of plots and development of internal infrastructure in the township in accordance with the sanctions / approvals by the state authorities. The necessary implication of the said clause is that there is non-identifiable property at the time the 'contribution or payment' is made but in the instant matter, identified developable land was already in place before advance sale consideration was received from the buyers.

(f) It is submitted that the agreements referred to in the impugned order date 07.10.2015 categorically recorded that the buyers could have made specific written request for the refund of advance sale consideration only in the event of failure of the Noticee No. 1 in obtaining the license and consequential right for the sale or allotment of land and erroneously held that the Noticee No. 1 had solicited investments with promise of refund of investment amount along with return in the nature of compensation.

(g) It is submitted that the requirements of Section 11AA(2)(iv) of the SEBI Act, 1992 are also not met in the instant case. The impugned order dated 07.10.2015 have brought on record nothing to show that there exists any 'management or operation' of any 'scheme or arrangement' that is occurring on a 'day-to-day' basis. Rather, there exists no scheme/arrangement and accordingly there is no question of there being the management or operation of such a scheme. The 'day-to-day' control that is envisaged under the aforesaid sub-section is that of the purported 'scheme or arrangement' and not of the 'immovable property' acquired for the Noticee No. 1 for development of township.

(h) It is submitted that none of the 115 complaints provided by its CIS division to the Noticee No. 1 belatedly at the time of conclusion of investigation proceedings, contained allegations of violation of the CIS Regulations and the Noticee No. 1 provided answers / clarifications in respect of each such complaint which were found to be satisfactory by SEBI.

(i) It is further submitted that it failed in appreciating and following the mandate of Section 27 of the SEBI Act, 1992 by which the Legislature has cautiously restricted the compliance obligations strictly to the persons who had been in-charge of and were responsible for the conduct of the business of the SEBI and on the contrary the they proceeded with passing of the impugned order against all such persons who either were not the directors of the Noticee No. 1 at the relevant period or were involved in the alleged acts or affairs. It is further stated that SEBI has vindictively not demonstrated the role of the Noticee Nos. 2 to 7 except that they have at different points of time been associated with the Noticee No. 1 as directors.

(j) The government of Haryana did not grant the requisite License (approval) for development of township at Sector 103, Dwarka Expressway, Gurgaon and resultantly, the project of Noticee no. 1 did not take off and in accordance with the contractual terms with the buyers, the Noticee no. 1 started refunding money to the buyers who opted for refund of advance sale consideration paid.

(k) The Noticees also submit that by the time the first letter from SEBI was received by the Noticees on 10.06.2013, an amount of Rs. 4.91 Crores was already refunded to the buyers who opted for refund of the consideration, as the license for the project (applied for in 2011) wasn't received by the Noticees till such time.

(l) It is further submitted that out of the total sale consideration of Rs. 51.03 Crores received by the Noticee no.1 towards sale of plots, an amount of Rs. 49.42 Crore was already refunded by the Noticee no. 1 before the issuance of Interim Order dated 05.06.2014. It is added that an amount of

Rs. 50.37 Crore was already refunded by the Noticee no. 1 before the issuance of Impugned Order dated 07.10.2015 and till date an amount of Rs. 70.59 Crore has been refunded by the Noticee no. 1 to its buyers. It is very pertinent to state that the Noticee no. 1 was constrained to refund the consideration amount received from the buyers on account of non-receipt of licence from the DTCP, Haryana and the Noticee no. 1 and other Noticees were never involved in floating, managing and operating 'schemes' akin to CIS as alleged.

CONSIDERATION OF ISSUES

13. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Company was engaged in fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act. It was also alleged that Adel has not obtained any certificate of registration under the SEBI (CIS) Regulations. Accordingly, the Company (Noticee 1) and its Directors (Noticees 2 to 7) are alleged of violating the provisions of SEBI Act and SEBI (CIS) Regulations.

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

    I. *Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations?*

    II. *Does the violation, if any, attract monetary penalty under Section 15D(a) of SEBI Act.?*

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

ISSUE-I: Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations?

15. It is pertinent to refer to the relevant provisions of SEBI Act and SEBI (CIS) Regulations, alleged to have been violated by the Noticees, which reads as under:

Section 12(1B) of SEBI Act

No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations: Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30 .

Regulation 3 of SEBI (CIS) Regulations

No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme

16. Before going into the merits of the case, I would like to examine the contention raised by the Noticees that continuation of the present Adjudication proceedings against the Company is barred by virtue of the moratorium issued by NCLT vide its order dated December 5, 2018, under Section 14 of IBC. In view of the above, it has to be first determined whether the present proceedings against the Noticee Company can be proceeded with.

17. In this respect, I note that the Report (issued in March, 2018) of the Insolvency Law Committee, which was constituted by the Ministry of Corporate Affairs, states the following in respect with the scope of moratorium declared under the IBC:

"….On a plain reading, section 14 is wider in its ambit as firstly, any suit or proceedings cannot be instituted or continued with the consent of the NCLT, and second, the bar on "the institution of suits or continuation of pending suits or proceedings against the corporate debtor" is on first blush, not linked to the assets of the corporate debtor. The notes on clauses for section 14, read as follows (emphasis supplied): "the purposes of the moratorium <u>include</u> keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default" and "the moratorium on initiation and continuation of legal proceedings, <u>including</u> debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process."

"Thus, the intent does not appear to be to debar only those suits or proceedings which affect the assets of the corporate debtor, as these appear to be only one of the components that are barred. Having said that, it is well understood that a proceeding to assess or determine liability and a proceeding to recover the assessed or determined liability stand at a different footing. The realisation of the dues is a consequence to the determination of liability. Such an amount determined by any court or authority during the moratorium period may not form part of the insolvency resolution process, as the claims by an IRP/RP are verified as "on the insolvency commencement date"

However, for such claims to be filed in liquidation, they should stand determined as on the liquidation commencement date. As per Section 33(5) of the Code, in liquidation, no suit or other legal proceedings shall be instituted by or against the corporate debtor without the prior approval of the NCLT. Thus, it appears that suits or proceedings which *were barred from being continued under CIRP can be re-started. However, since the claims in liquidation are determined as on the liquidation commencement date, the wider moratorium under section 33(5) may not be useful for a claim which could not be assessed due to the moratorium under CIRP. Thus, if a purposive interpretation is given to section 14, a moratorium on the mere determination of the amount (and not its enforcement) may not have been the intent of the Code…..”*

18. I note from the above observations of the Insolvency Law Committee that a proceeding for assessing or determining the liability is different from a proceeding initiated to recover the assessed or determined liability. The Committee further observes that a moratorium on determination of the liability may not have been the intent of the IBC. Hence, I am of the view that the moratorium declared under Section 14 of the IBC will not prevent any proceeding from determining the liability of the corporate debtor and the moratorium declared under the IBC will be applicable to the enforcement / recovery of the determined liability. I note that the present Adjudication proceedings against the Noticee Company are in the nature of determining the liability of the Noticee for the alleged violation of various provisions of SEBI Act and SEBI (CIS) Regulations. I note from the reply of the Noticee 1 that the NCLT vide its order dated December 5, 2018 has, inter alia, appointed the RP as such. Further, no liquidation order in respect of the Noticee has been passed and, as such, the opportunity for obtaining approval of the Hon'ble NCLT does not arise at this juncture. Therefore, I am of the view that the moratorium declared by the Hon'ble NCLT will not affect the present proceedings. In view of the above, I now proceed further on the merits of the matter.

19. I note that the Noticee 1, vide its letter dated July 14, 2014, July 20, 2014 and August 07, 2014 furnished the following documents & details, which are as under:

(a) Adel has applied for license on a land of approx. 108 acres held by UBA Realtech Pvt. Ltd. in consortium with eight other group companies. All these companies are either subsidiary of Adel or controlled by other promoter companies. It also provided shareholding pattern of its group companies.

(b) List of land owned by group/associate companies of Adel up to August, 2011 along with copies of the first two pages of sale deed.

(c) Copies of development agreement with its subsidiaries/group companies for its three projects namely Cosmocity1 at sector 103, Gurgaon, Sky Ville at sector 68 Gurgaon and Cosmocity3 at sector 103, Gurgaon.

(d) Memorandum of understanding between Adel and its group companies.

(e) Details of amount mobilized from the customers and refunded.

(f) Copy of application to DTCP, Haryana by UBA Realtech Pvt. Ltd. for grant of license for plotted colony on land measuring 108 acres in Sector 103.

(g) It has a total of 105.47 acres in sector-103, Gurgaon and has obtained license in respect of 21.36 acres and has applied for license in respect of 15.07 acres. It has a balance land of 69.05 acre.

(h) As per the list submitted by the Company, under its 'pre-booking of plots' scheme, it has 108 customers to whom it has repaid ₹50,52,28,939/- (along with compensation) and is yet to repay ₹14,86,24,193/-.

(i) The Company has also provided copies of agreements it enters into with its customers. From such documents it is observed that the buyer who intends to buy the plot from Adel is required to make an 'application for registration' as per the prescribed format and pay certain amount being part/ full consideration of the land/unit applied by them. The 'application for registration' mentions that the customer is applying for purchase of residential unit(s) tentatively measuring 300 sq. yd./350 sq. yd./400 sq. yd./450 sq. yds. in the upcoming project of Adel on Dwarka Expressway, Gurgaon.

20. Upon perusal of the 'application form', I note that the area of the residential plot/unit applied by the customer is tentative. Further, I also note from the application form that the customer is applying for allotment of the unit on/near Dwarka Expressway. The 'application for registration' only specifies the area (in sq. yd.), but no specific plot number or the exact location of the plot is identified at this stage.

21. Upon perusal of the Agreements forwarded by Adel vide letter dated November 11, 2011 executed by Adel with Gen. Uma Kant Dube and Ritika Dubey, the following clauses are observed:

> *"The second party (customer), being desirous of acquiring developed residential plots on Dwarka Expressway, Gurgaon has approached the First Party (Adel) and has expressed its desire to contribute and invest funds for* **future** *purchase of land in the name of the First Party, <u>which is being purchased</u> by the First party for residential colony to be developed by it as per the licenses/sanctions/approvals of the competent authority.*
>
> *The second party (customer) has also requested the First Party (Adel) that in lieu of the aforesaid contributions by the Second Party for the purchase/acquisition of future land for developing residential plots, in a future residential colony, developed plots in the said residential colony may be reserved for allotment on priority to the second party.*
>
> *The second party has agreed to provide funds as per details and payment plan to the First party for the purchase/acquisition of future land for developing residential plots in a future residential colony by the first party in its name or in the name of its associates/nominees etc.*
>
> *Basic amount to be paid by second party: 93,00,0000*
>
> *The First Party, in lieu of the aforesaid contributions and investment by the Second Party towards the purchase/acquisition of future land for developing residential plots in a future residential colony by the first party on/near Dwarka Expressway, Gurgaon has agreed to reserve an area of approximately 300 sq. yd. to be allotted within 12 months with a grace period of 6 months from the effective date for allotment on priority basis in favour of second party.*

In case the first party fails to obtain the license and consequential right for the sale or allotment of the land, within a period of 18 months or is unable to make allotments of land in terms of this agreement due to any reason whatsoever, then the second party shall be entitled to get Rs. 17,57,700 as compensation along with refund of existing contribution paid by the second party.

That it has been agreed by the Second Party that the land can be allotted anywhere on/near Dwarka Expressway, Gurgaon in the integrated residential colony being developed by the First Party, and such decision of allotment shall be at the sole discretion of the First party.

22. Similar clauses are also present in the other agreements submitted by the Company in respect of its customer – Sandeep Dhingra, Sharad Malik & Aaru Gupta, Rajiv Laroia.

23. From a reading of the above clauses of the agreement I note that the money contributed by the customers is to be used by Adel for purchase/acquisition of land in its name or in the name of its associates. The land so acquired would be used by Adel for development of a residential colony in which the developed plots on/near Dwarka Expressway will be allotted to the customers within a period of 12 months with a grace period of 6 months. The above clause is contrary to the submission by the Company that it already has land in its possession through its group/associate companies. Further, the agreement or the application for registration do not indicate the exact location where the plot would be allocated to the customer and clearly says that the land would be allotted anywhere on/near Dwarka Expressway, Gurgaon in the integrated residential colony being developed by the Company and such decision of allotment shall be at the sole discretion of Adel. I note that the customers are not given any option by Adel to indicate the plot no. or location of their preference. In none of the documents submitted by Adel, there is an option given to the customer to indicate the preference of the location or the plot opted by the customer.

24. Further, I note that the price charged for the plots was as per the prevailing market rates and it varied depending on the location of the plot preferred by the customer. In a regular real estate transaction, whenever, a plot/ land/ flat is sold, the developer clearly demarcates the plot/ land/ flat and location of the plot/unit to be allotted to its customers. However, for plots against which money was accepted by Adel from the customers neither the location nor the plots are identified. Further, the agreement states that the customer can be allotted plot/land anywhere on/near the Dwarka Expressway and such decision of allotment shall be at the sole discretion of Adel. From the same, it is observed that the plots/units are not identifiable.

25. I also note from the agreement executed by Adel with Gen. Uma Kant Dube and Ritika Dubey that in case Adel fails to obtain the license and consequential right for the sale or allotment of the land within a period of 18 months or is unable to make allotments of land/plot to the customer due to any reason then it would refund the contribution made by the customer for the plot along with ₹17,57,700. Similarly, as per the agreement executed by ALL with Mr. Sandeep Dhingra, the company had promised to pay ₹14,79,240 on his investment of ₹85,36,000 in case it fails to allot the land/plot within 18 months along with the amount paid by him. From the documents, it is noted that Adel has not allotted plot to any customer.

26. Therefore, from the above, it can be reasonably concluded that the transactions of the Company were more in the nature of investment scheme. The Company in its submissions has admitted of receiving ₹51.03 Crore from more than 500 investors (432 from Group Housing Project and 108 from the plotted scheme of the company).

27. In the light of the above observations, it is to be tested whether the alleged Scheme by the Company of 'pre-booking of plots' qualify as a CIS in terms of Section 11AA(2) of the SEBI Act.

Condition 1 - The contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

28. The customers of Adel are required to execute an application registration form and an agreement. It is noted that none of these initial documents mention the exact plot no. or the location where the plot would be allotted by Adel. These documents only mention the area (in sq. yd.). In view of the same, it can be concluded that Adel does not identify the plot at the time of accepting the money from the customers for the plots. Further, the agreement executed by Adel with the customer states that the money contributed by the customers is to be used by Adel for purchase/acquisition of land in its name or in the name of its associates. The land so acquired would be used by Adel for development of a residential colony in which the developed plots on/near Dwarka Expressway will be allotted to the customers within a period of 12 months with a grace period of 6 months. The Company has produced a G.O. of the Haryana Govt. to state that by payment of a penalty it could regularize the alleged pre-booking of plots. However, in the light of the fact that the agreement contemplates a 'compensation' which is also shown in the list claimed to show the repayments made by the Company, it is noted that the contributions or payments made by the investors in the Scheme of the Company has been pooled and utilized for the purposes of the scheme/ arrangement. Therefore, the first condition stipulated under section 11AA(2)(i) of the SEBI Act is satisfied.

Condition 2 – The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme.

29. In this scheme referred above, I note that the Investors have the option to get a plot of land which will be purchased and developed by the Adel by pooling the amounts collected from the investors. It is noted from Clause 13

of the agreement dated December 18, 2011 (entered into by one Mr. Sandeep Dhingra who had invested ₹85,36,000/-) that in case Adel fails to allot the plot to him within 18 months the customer shall be eligible to receive ₹14,79, 240.00/- along with the refund of existing investment. Further, the Company has also stated that it in case it was not able to get license for the proposed project, it had to refund the amounts received along with compensation. I also note from the list claimed to be the details of repayment made by the Company to its investors that for a customer Arun Singh Khokhar, it is stated that ₹40,17,000/- is the 'Received Amount'. Along with the compensation amount of ₹12,65,355/-, the Company claims to have paid ₹51,55,819/(after deducting TDS of ₹1,26,536/-). Similar is the case for all 108 customers mentioned in the said list. Therefore, I note that the Company has solicited investments with a promise of refund of investment amount along with return in the nature of compensation. Hence, the second condition, which stipulates 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 as stipulated in Section 11AA (2) (ii) of the SEBI Act is also satisfied.

Condition 3 - The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.

Condition 4: The investors do not have day to day control over the management and operation of the scheme or arrangement.

30. As noted in the preceding paragraphs, Adel agrees to allot a future plot to the investor upon execution of the "Agreement". However, at the time of execution of agreement, the land or its location is not identified. It is further noted that the said execution of the agreement shall not be construed as an agreement to sell. From this, it is clear that the investor is making contribution or investment in an unidentified land/unit. The allotment of such plot/land to the investor is at Adel's discretion. Till the time, the plot of land is actually transferred in the name of investor, by executing a sale deed; the land to be purchased and developed will remain in the control of Adel on

behalf of such investor(s). As has been observed in the preceding paragraph, I note that Adel, collect monies from investors for the scheme of "Purchase and development of plot” without identifying the land/plot, indicating return in the form of compensation. Further, the investors do not have any say in choosing a particular property or in the further development of the property. This indicates that the investors do not, at any stage, manage the property, contribution or investment forming part of the 'Scheme' and the contribution or investment is managed and utilized by Adel on behalf of the investor. In view of the above, I note that the third and fourth conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act are satisfied.

31. In view of the above, I conclude that the Scheme of the Company for pre-booking of plots is in the nature of a Collective Investment Scheme as all the four conditions specified under section 11AA (2) of the SEBI Act are satisfied. Therefore, I find that the Company is engaged in the fund mobilising activity from the public by floating/ sponsoring/ launching 'collective investment schemes' as defined in Section 11AA of the SEBI Act.

32. In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013), wherein the Hon’ble Court had occasion to adjudge on a scheme having features similar to the instant Scheme of "Purchase and development of plot”, as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

“A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor’ concerned. ……....................... Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise

of development of land............ In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion. … We therefore hold that Section 11AA of the SEBI Act is constitutionally valid."

33. The features of the scheme of "Purchase and development of a future land" offered by Adel, as discussed in the preceding paragraphs, when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by Adel under such 'Scheme' with a resultant promise of returns, falls within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.

34. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. Adel has failed to do so. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (CIS) Regulations. Thus, I conclude that Adel has launched a CIS without obtaining certificate of registration from SEBI; thereby it has contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (CIS) Regulations.

35. As regards the liability of the other Noticees, as per the list of signatories available on MCA website Rakesh Kumar Gupta(Noticee 2) appointed as a Director on February 20, 2014, Sumit Bharana(Noticee 3) appointed as a Director on October 31, 2012, Arvind Kumar Birla (Noticee 4) appointed as a Director on January 01, 2010, Rashmi Bharana (Noticee 5) (who was appointed on January 05, 2011 and resigned on May 1, 2013), Sanjay Chawla(Noticee 6) (who was appointed as a director on January 01, 2010 and resigned on October 31, 2012) and Manisha Bharan (Noticee 7) ManishaBharana was Director of the Company during the period May 01, 2013 to July 25, 2014. I note from the tenure of the Directorship of the Noticees in Adel that that they were the Directors of Adel at the time Adel was mobilizing money, by floating a scheme of CIS. Thus, the Company and its Directors were engaged in the illegal fund mobilizing activity by floating/ sponsoring/ launching, unregistered/ unauthorized CIS, as defined in the Section 11AA of the SEBI Act. Therefore, it is concluded these Directors (Noticees 2 to 7) are liable for the violations committed by the Company in operating a Scheme of pre-booking of plots as discussed which is a CIS in terms of section 11AA of the SEBI Act, without obtaining registration from SEBI under section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (CIS) Regulations.

36. I find from the Order of the Hon'ble SAT dated December 7, 2017 that the Hon'ble SAT without going into the merits of the arguments as to whether the schemes floated by the Noticee Company constituted CIS or not, disposed of the Appeal by permitting the Noticees to make a representation to SEBI within a period of eight weeks from the date of the Order setting in detail the name and the quantum of amount already refunded and the mode and the manner in which the balance amount would be refunded. From the plain reading the Order of the Hon'ble SAT that the Order of the Hon'ble WTM, SEBI dated October 7, 2015 has not been set aside. Rather, the Hon'ble SAT remanded the matter back to SEBI to examine the repayments made/to be made by the Noticees to the investors, of the Scheme it floated. Therefore, the claim made by the Noticees that SAT has considered the Appeal is ill motivated and lacks any substance.

37. The Noticees in their submissions furnished the details of steps they have taken for refunding the money and the proof of payments made to the investors, pursuant to the Directions issued by the Hon’ble WTM, SEBI and Hon’ble SAT. I note that the cause of action of these Adjudication proceedings is not to look into the aspect of repayment by the Noticees to the investors, rather to adjudge whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and SEBI (CIS) Regulations. The submissions made by the Noticees on the aspect of whether the Scheme floated by it falls under the purview of “CIS” or not have already been appropriately dealt in the pre-paragraphs. Further, I note that the submissions made by the Noticees on repayment of money to the investors does not preclude SEBI from taking action against it for floating a CIS scheme without obtaining registration from SEBI.

38. Further, the Noticees 2 and 6 in their respective submissions pleaded ignorance of the CIS scheme floated by the Company and its Promoters. In this connection, it is pertinent to note that the Noticees were occupying the Board of Adel as Directors during the period when Adel was mobilising funds from the Public. Therefore, pursuant to initiation of proceedings for wrongdoing by the Company and its Promoter/Directors, the submissions of the Noticees lack any spirit. A Director employed to devote the whole of his time and attention in carrying on all the affairs of the company. The role of a Director is very significant and material in running day to day affairs of a company. His role and responsibility implies a high level of accountability and knowledge of the overall functioning of the company. I note that the Noticees being the Directors of Adel should have cross checked the legality of the Scheme the Company had floated and should have raised their concerns at that time rather than pleading ignorant now. Even, if it is assumed that the Noticee had lent his name for some other purpose, name lending is a serious offence which enables manipulators to carry out their nefarious activities by masking their identity. In the instant case, there are no records to justify that the Noticee was caught unaware of scheme of things of fraudulent activity. In this regard, I take note of the observation of The

Hon'ble Securities Appellate Tribunal in Rahul H. Shah Vs. SEBI (Appeal No. 83 of 2012 decided on May 11, 2012) wherein it was observed that name lending *"is a fraudulent activity and requires to be curbed for maintaining the sanctity of the securities market".* Therefore, I find no merit in the arguments put forth by the Noticees 2 and 6.

ISSUE – II: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?

39. It is established that the Noticee Company 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 and its Board of Directors viz., the Noticees 1 to 7, have contravened the above provisions and therefore the Noticees are liable for monetary penalty under Section 15D(a) of SEBI Act, the provisions of which are reproduced hereunder.

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

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

40. While determining the quantum of monetary penalty under Section 15 D (a) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

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

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

(c) the repetitive nature of the default.

41. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. The hard earned money of the investors cannot be allowed to be duped by the illegal activities of the Company. The activities of unauthorized pooling of funds from the investors by the company are illegal because it has launched CIS without obtaining certificate of registration from SEBI. Any attempt by any person or entity to raise funds illegally, without complying with regulatory requirements, especially from gullible investors, warrants strict action. Therefore, I consider it as fit case for imposition of penalty which would not only act as deterrent to Noticee but also instil confidence among the investors.

ORDER

42. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, hereby impose the penalty on the Noticees under Section 15D(a) of SEBI Act.

Sl. No.	Name of the Noticee	Penalty amount in ₹ and words
1	Adel Landmarks Ltd.,	25,00,000/- (Rupees Twenty Five lakhs only) To be paid jointly and severally
2	Rakesh Kumar Gupta	
3	Sumit Bharana	
4	Arvind Kumar Birla	
5	Rashmi Bharana	
6	Sanjay Chawla	
7	Manisha Bharana	

43. The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

44. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

45. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-III, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

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

47. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: June 30, 2020 **B J DILIP**
Place: Mumbai **Adjudicating Officer**