BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/20850]

UNDER SECTION 15-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

Mr. Jagdish Chandra Sharma
[PAN: ACRPS1940E]

In the matter of Sobha Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation with respect to trading in the scrip of Sobha Limited (hereinafter referred to as '**Sobha Ltd/Company/Sobha'**) for the period, September 01, 2017 to November 30, 2017 (hereinafter referred to as **"investigation period/IP**"). The company is listed on BSE Ltd (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") (hereinafter collectively referred to as "**Exchanges**"). The focus of investigation was to ascertain, whether there was any violation of the provisions of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') and SEBI (Prohibition of Insider Trading Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") in respect of trading in the scrip of Sobha Ltd. during the investigation period. On conclusion of the investigation, SEBI observed violations of the provisions of PIT Regulations and SEBI Act by one Mr. Jagdish Chandra Sharma (hereinafter referred to as "**Noticee/ By Name/ Mr. J.C Sharma**"). Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15G(i) of SEBI Act, the alleged violation of provisions of Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated March 15, 2022, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15G(i) of SEBI Act, the aforesaid alleged violation by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show-cause notice dated May 09, 2022 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15G(i) of SEBI Act for the aforesaid violation alleged to have been committed by him.

4. The allegations levelled against Noticee in the SCN are as summarized hereunder:

   a) During the course of investigation, it was observed that Sobha Ltd. made corporate announcements on October 06, 2017 regarding an update on the real estate operation of the company for the quarter ended September 30, 2017 on BSE and NSE. The company in its aforementioned corporate announcement, *inter-alia*, stated that during the second quarter, it achieved a new sales volume of 861,084 sq ft total valued at 6751 million. From the corporate announcement, it was also observed that during the quarter September, 2017, the sales volume and total sales value of Sobha Ltd were up by 5.6% and 8.3% respectively as compared to the preceding quarter. Further, it was also noted that sales volume was marginally higher and total sales value is up by 22.5% as compared to Q2-17.

   b) From the submissions of the company, it was observed that real estate operational update was also part of the financial results of the company for the quarter and half year ended September 30, 2017. Further, the volume of the scrip had increased on October 06, 2017 (BSE-8343 and NSE- 117460) the day when disseminated the corporate announcement scrip and the volume and price had risen substantially in the subsequent days. Hence, the said corporate announcement was treated as positive news based on market impact. It was observed that the corporate announcement on October 06, 2017 regarding statement of the update on the real estate operational performance of the company is Unpublished Price Sensitive Information (UPSI) in terms of Regulation 2(1)(n) of PIT Regulations.

c) During investigation, the company vide its reply dated August 22, 2019 submitted that, the information on the real estate operation update is prepared on the basis of MIS received from various locations where the company operates and at the end of each quarter, a detailed consolidated report on the operation is prepared and submitted to the stock exchanges. The same report is uploaded on the website of the company. The company in its submission stated that the MIS disclosure is extracted from the ERP system (Enterprise Resource Planning) of the company by Mr. Balamurugan, Senior Manager – Investor Relations. From the chronology submitted by the company for preparation of the real estate operational update it was observed that the details of the operations for consolidation of data were received by Senior Manager – Investor Relations, Mr. Balamurugan, on daily basis starting from October 01, 2017. Accordingly, October 01, 2017 was considered as the date when UPSI came into existence.

d) It was observed that the corporate announcement regarding real estate operational update for the quarter ended September 30, 2017 was intimated by Sobha Ltd to BSE on October 06, 2017 at 16:43:29 and to NSE at 16:57:00. The BSE disseminated the corporate announcement with regard to real estate operational update for the quarter ended September 30, 2017 on October 06, 2017 at 16:43:38 and NSE disseminated the same at 16:57:00 In light of the foregoing, the period of UPSI was considered as October 01, 2017 to October 06, 2017.

e) As per the submissions of the company vide letter dated August 22, 2019, It was observed that Noticee was having access and was privy to the UPSI of real estate operational update for the quarter ended September 2017.Noticee was Vice Chairman and Managing Director of Sobha Ltd, as well as an audit committee member. He was also a designated employee of Sobha Ltd. It was noted from the submissions of the Company that Mr. Balamurugan, Sr. Manager, Investor Relations, had finalized the operational updates and the same was placed before Noticee on October 06, 2017 for review and approval. Moreover, as per the replies dated February 03, 2022 received from the Company and Noticee, it was observed that Noticee was entrusted with the overall responsibility of finance, purchase, achieving the targets of the company and he was getting updates from various departmental heads on periodical basis / time to time. Thus, Mr. Jagdish Chandra Sharma had access to UPSI based on the updates received on regular basis, even before October 06, 2017, i.e. the day on which he had reviewed and granted approval to real estate operational update for the quarter ended September 2017. In light of foregoing, it was observed that Noticee was an insider in relation to the Real Estate operational Update for the quarter ended September 2017.

f) Further, during the investigation, the trade details of the insiders, if any, in the scrip of Sobha Ltd. during the UPSI period were examined. From the trade details as submitted by NSE and BSE, it was observed that in NSE, Noticee i.e. Mr. Jagdish Chandra Sharma had bought 3000 shares with the value of Rs.11,73,242/-on October 06, 2017 i.e. during the UPSI period. It was noted that for the aforementioned transaction, necessary disclosure in compliance with PIT Regulations have been made by Noticee. Further, no trading was observed by Mr. Jagdish Chandra Sharma during pre UPSI (September 01, 2017 to September 30, 2017) and post UPSI period (October 07, 2017 to November 30, 2017).

g) The trading details of Mr. Jagdish Chandra Sharma on NSE are as follows:

Date	Buy Qty	Wt. Avg. Buy Price(in `)	Sell Qty	Wt. Avg Sell Price(in `)
Prior to UPSI period(September 01, 2017 to September 30, 2017)				
No trades observed related to Sobha Ltd.				
During UPSI Period(October 01, 2017 to October 06, 2017)				
October 06, 2017	3000	390.49	0	0
Post UPSI Period(October 07, 2017 to November 30, 2017)				
No trades observed related to Sobha Ltd.				

h) Further, it was observed that Noticee as an insider had made following unlawful gain as a result of his trading in the scrip of Sobha:

Sr.no.	Name	No of shares bought in possession of UPSI		Closing price on the day UPSI become PSI (#)	WAPP(weighted average purchase price) (@)	Total purchase value (in ₹)	Notional purchase value (in ₹)	Unlawful gain (in ₹)
		Exchange	A	B	C	D (A*B)	E (A*C)	F=D-E

1	**Mr. Jagdish Chandra Sharma**.	**NSE**	**3000**	**460.00**	**390.49**	**13,80,000**	**11,71,470.00**	**2,08,530.00**

(# - Closing price of October 09, 2017 was considered for calculation of profit).

(@ - total trade value divided by (/) no. of shares purchase during UPSI).

Unlawful gain = {No. of shares bought while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange}.

Less (-)

{No. of shares bought while in possession of UPSI X weighted average purchase price}

i) In light of observations in preceding paragraphs, it is alleged that Noticee i.e. Mr. Jagdish Chandra Sharma had traded in the scrip of Sobha Ltd. while in possession of UPSI and had violated Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations.

5. The SCN along with annexures in CD was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on May 11, 2022, and soft copy of SCN without annexures were served on Noticee through digitally signed email dated May 11, 2022 at his email address vcmd@sobha.com. Vide the aforementioned email, it was informed to Noticee that original SCN along with annexures in CD was separately sent to Noticee through Speed Post AD. The SCN sent through SPAD returned undelivered. In this regard, Noticee vide email dated May 23, 2022, informed that he did not live in address to which SPAD was sent and provided address for sending SCN and annexures. In light of the aforementioned email, SCN along with annexures was duly served on Noticee through SPAD at the address specified by Noticee in the said email. Noticee was given fifteen (15) days' time to make his submissions in respect of the allegations made in the SCN. Vide letter dated June 13, 2022, Noticee submitted his reply to the SCN.

6. Thereafter, in the interest of natural justice, vide hearing notice dated August 19, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on September 05, 2022. The aforesaid hearing notice was sent to Noticee through digitally signed email on August 19, 2022 and was duly served upon him. Vide email dated August 27, 2022, Noticee requested for adjournment of hearing citing his authorized legal representative was not available on the scheduled date of hearing. In light of the aforementioned email, hearing in the matter was rescheduled to September 21, 2022. However due to certain technical glitches, hearing in the matter could not be conducted on September 21, 2022 and was rescheduled to September 23, 2022. On September 23, 2022, the authorised representative of Noticee, Ms

Shailashri Bhaskar, appeared for hearing in the captioned matter and reiterated the submissions made by Noticee in his earlier reply dated June 13, 2022. The hearing was conducted through video conferencing.

Relevant Extract of Reply dated June 13, 2022 filed by Noticee

a) *I would like to submit that Sobha Limited gives regular updates on the real estate operations of the Company on a quarterly basis. Such practice is followed by many other industries as well. These are done on a quarterly basis and the announcements referred to in Annexure II is one such regular update. I would like to submit that Sobha Limited has submitted the update during the year 2017-18 as under:*

Quarter	**Date of Submission**
March 31, 2017	*04.04.2017*
June 30, 2017	*05.07.2017*
September 30, 2017	*06.10.2017*
December 31, 2017	*05.01.2018*
March 31, 2018	*05.04.2018*

b) *This update is submitted immediately after the end of the quarter and much before the announcement of the quarterly results and normally contains the back drop of the real estate scenario, the sales volume location wise during the quarter, the sales value location wise during the quarter and the location wise price realisation during the quarter. The statement also has a disclaimer regarding forward looking statements and is a summary of the sales achieved during the quarter by the Company. The updates submitted during the entire year (all the six of them referred to above) is enclosed as Annexure 1 for your ready reference and you will notice that all the statements have some positive outlook or news in them. Hence, to link the increase in prices to this update does not seem appropriate and there could have been several other reasons for the price and volume to increase on 09.10.2017 and 10.10.2017*

c) *I would like to clarify that, Real Estate Operational updates referred to in the Show Cause Notice are not a part of the Financial Results, rather more of in the nature of the Press Release for providing transparent and timely information to the market/general public. The sales figures are pre-construction and post construction both, which are announced to the market based on the booking done by the Customers during a particular period. These sales/revenue from the said sales are not necessarily recognised/formulated as revenue for the quarter. There are certain revenue recognition guidelines based on which, the revenue is recognised in the quarterly P &L Account.*

d) *Till 31% March, 2018, in the Real Estate sector, revenue from real estate projects were recognised when it is reasonably certain that the ultimate collection will be made and that there is buyers' commitment to make the complete payment. The following specific recognition criteria must also be met before revenue is recognized:*

   i. *the expenditure incurred on construction and development costs (excluding land cost) is not less than 25% of the total estimated construction and development costs;*
   ii. *at least 25% of the saleable project area is secured by contracts/agreements with buyers; and*
   iii. *all critical approvals necessary for the commencement of the project have been obtained;*
   iv. *at least 10% of the contracts/agreements value are realised at the reporting date in respect of such contracts/agreements.*

e) *Accordingly, Revenue from real estate projects is recognised upon transfer of all significant risks and rewards of ownership of such real estate/property, as per the terms of the contracts entered into with buyers, which generally coincides with the firming of the sales contracts/agreements. Where the Company still has obligations to perform substantial acts even after the transfer of all significant risks and rewards, revenue in such cases is recognised by applying the percentage of cumulative completion in the quarter for cumulative sales till the quarter (across all the projects being executed by the Company) method only if the above thresholds have been met.*

f) *When the outcome of a real estate project can be estimated reliably and the conditions above are satisfied, project revenue (including from sale of undivided share of land) and project costs associated with the real estate project should be recognised as revenue and* *expenses by reference to the stage of completion of the project activity at the reporting date arrived at with reference to the entire project costs incurred (including land costs).*

g) *Hence, the sales figure of a particular period given in the market release does not have any relation to the financial results of that particular period/quarter. Therefore, operational updates are not considered as not part of the Financial Results and not part of the price sensitive information and accordingly, formally the trading window is not closed for all the designated persons before the release of the said updates.*

h) *Hence, all the reports for the previous quarters have positive news and to link only the report of quarter ended September 30, 2017 to the market performance is incorrect. Therefore, would like to submit that the real estate updates which are given by the Company regularly every quarter is not Unpublished Price Sensitive Information and this update has had no relevance to the increase in price or volume in the scrip of Sobha Limited on 9.10.2017 and 10.10.2017*

i) *I confirm that the Real Estate Update prepared and forwarded to me by Mr. Balamurugan Senior Manager is approved by me for release to the stock exchanges on the date of release. Hence, the data collated from the various centres by Mr. Balamurugan is presented to me every quarter for approval and release and in the instant quarter referred by you, it was approved by me on, October 06, 2017 and released on the same date by our Company Secretary to both the stock exchanges NSE and BSE for dissemination.*

j) *I would like to confirm that the data is collated only by Mr. Balamurugan and the same is share with me only on the date of release and not before that.*

k) *I would like to state that being the Managing Director of the Company, I would be interested in knowing the performance of the Company on a regular basis. I would hold operational updates with the team on regular intervals to push up sales and to strategise our business operations to achieve the targets and results.*

l) *I do not deny that I am an Insider as I am the Managing Director of the Company. When our senior manager states that the update was approved by me only on October 06, 2017 to allege that I had knowledge of the update before October 06, 2017 is unfounded and without any basis. Further as I have already stated, we do not consider this a UPSI and is a regular update sent out by our Company every quarter.*

m) *I confirm that I had bought 3000 shares on October 06, 2017 after applying for pre-clearance to our Compliance Officer and after making the necessary disclosures. It is also* *submitted that the Trading Window was not closed at that time and since we do not consider the regular update as UPSI, I deny that I have bought the shares while being in possession of any UPSI. Although I may have purchased shares only on October 06, 2017 and not until November 30, 2017, I have been buying and selling shares of Sobha Developers from time to time after observing all the procedures mandated by the PIT Regulations, like pre-clearance, no contra trade, disclosures and trading only when the Trading Window is open.*

n) *Since I did not sell the shares till 27" May, 2019, I disagree that I have made any profit out of the said purchase. The market has gone up and down between this period. Accordingly, I do not agree with the contents of Paragraph 22 as they are based on notional calculations and not on actual basis.*

o) *I deny the allegation in Paragraph 23 and that J have traded while being in possession of UPSI and have violated the provisions of Section 12A(d) & (e) of the SEBI Act, 1992 and Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 for the following reasons:*

   1. The Update for quarter ended September 30, 2017 is a regular update and all the updates contain some positive news or other.

   2. Our Company has never considered the updates as UPSI

   3 I had no access to this update until October 03, 2017 when I cleared it for dissemination to the stock exchanges.

   4. Being a Managing Director and in charge of operations I am in possession of sales figures at all times and not only during the updates or financial results

   5. The Trading window was open during the time of my purchase of 3000 shares and I was not prohibited from purchasing the shares during this period

   6. Necessary pre-clearances have been taken by me.

   7. Necessary disclosures have been made by me.

   8. Your calculations are notional in nature and is not correct.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

   I. Whether Noticee has violated provisions of Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations?

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

III. If the answer to issue no III is in affirmative, then what should be the quantum of monetary penalty?

8. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which was in force at the time of impugned transactions, which are reproduced as under:

<u>PIT Regulations</u>

Trading when in possession of unpublished price sensitive information.

4.(1)No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i) the transaction is an off-market inter-setransfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

(ii) in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

<u>SEBI Act</u>

Section 12A(d) & (e) of SEBI Act:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

…….
………….
…………..
(d) engage in insider trading;
(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Issue No.I- Whether Noticee has violated provisions of Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations?

9. It has been alleged in the SCN that Noticee, being an insider, had traded in the scrip of Sobha while in possession of Unpublished Price Sensitive Information (UPSI) and thereby violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations.

10. I note that in order to determine the issue involved in the present case, there is a need to examine following:
    a) UPSI involved in the case and period of UPSI
    b) Whether Noticee was an insider?
    c) Whether the impugned trades were done by Noticee when in possession of UPSI?

11. Sobha Ltd is a Rs. 28 billion company with real estate presence in 9 cities, viz. Bengaluru, Gurugram, Chennai, Pune, Coimbatore, Thrissur, Calicut, Cochin, and Mysore. The Company is headquartered in Bengaluru and has footprint in 26 cities and 13 states across India. It is involved in building of complete constructions or parts thereof; civil engineering.

12. In the present matter, SCN has considered corporate announcements made by Sobha on October 06, 2017 regarding an update on the real estate operation of the company for the quarter ended September 30, 2017 (hereinafter referred to as "Real Estate Operation Update dated October 06, 2017") on BSE and NSE as UPSI. In this regard, I note that Noticee in his reply to the SCN has disputed the treatment of Real Estate Operation Update dated October 06, 2017 as UPSI and has contended that Sobha has been giving regular updates on the real estate operations of the Company on a quarterly basis and the Company does not consider the said updates as UPSI period.

13. At this juncture, it is pertinent to note Regulation 2(1)(n) of PIT Regulations which defines UPSI and the same, as it stood during the relevant time, is reproduced hereunder:

(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel

(vi)material events in accordance with the listing agreement

NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

14. I note from the above that for an information relating to company to be treated as an UPSI, such information upon becoming generally available should have the potential to materially affect the price of securities. In this context, I find it pertinent to refer to the decision of Hon'ble Supreme Court of India in SEBI vs. Abhijit Rajan (Civil Appeal No.563 of 2020, Decision dated September 19, 2022) , wherein the Hon'ble Court while examining price sensitive information has held as under:

> *"…………..that the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company.* *An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant……………………"*

15. I note that Hon'ble SAT in the matter of Anil Harish Vs. SEBI (date of Order-June 22, 2011) has held that whether an information is price sensitive information or not will depend on the facts and circumstances of each case. In the present matter, I note that Real Estate

Operations Update dated October 06, 2017 which relates to the quarter ended September 30, 2017 released the following information to public :

a) The Company during the second quarter of 2017 (i.e. quarter ended September 30,2017) achieved new sales volume of 861,084 square feet total valued at Rs 6,751 million with an average realisation of Rs 7,840 per square feet (Sobha Share of sales value at Rs 5,927 million with an average realisation of Rs. 6,883 per square feet). The sales volume and total sales value are up by 5.6% and 8.3% respectively as compared to preceding quarter. Also, sales volume is marginally higher and total sales value is up by 22.5% as compared to Q2-17.
b) Company continued to perform well in their principal market Bengaluru. There was an improved performance in the Kochi market followed with a consistent traction in other markets and same was achieved without launching any new projects.
c) Company published their summarized Real Estate performance for the quarter ended September 30, 2017, which contained new sales achieved by the company in the 9 cities in which they have their real estate presence and total sales value and price realisation achieved by company in the second quarter.
d) Besides Bangalore, Kerala market includes Kochi, Calicut and Thrissur regions sales performance had shown improvement in volume. Sales volume up by 5.6% as compared to preceding quarter and marginally up by 0.6%.
e) Sales value (Sobha Share) up by 5.3% and 14.4% as compared to preceding quarter and Y-o-Y respectively.
f) The new sales value of Rs. 5,927 million achieved during the second quarter of 2017-18 is highest in the past 10 quarters.

16. I note from the above that Sobha, vide the aforementioned real estate update, had informed to public the sales performance of the Company in its real estate market during the quarter ended September 30, 2017 which include details like sales volume achieved by the company, increase in sales volume, total sales value etc. I am of view that sales performance of a listed entity during the financial year/quarter is a critical information taken into consideration by an investor for deciding whether to invest in a company or not. News/information indicating good sales performance by a listed entity in ordinary course would influence the decision of investors and attract the investors to the scrip of listed entity and vice versa. Therefore, I am of view that information relating to sales performance of company for a quarter will have the potential to materially affect the price of the scrip. In light of the same, I find real estate operational updates which contain sales performance of the Sobha for the financial quarter has the potential to materially affect the price. In view of the observations detailed above and

taking into account Regulation 2(1)(n) of PIT Regulations, I find that Real estate operational update dated October 06, 2017 is a price sensitive information.

17. I observe that real estate operational update dated October 06, 2017 presented a positive picture regarding real estate operations of the company for the quarter ended September 30, 2017. Even though actual impact on price of scrip is not necessary for considering whether an information is price sensitive information or not, as it is the potential to materially impact the price which is relevant, I note that in the present case there has been an upward movement in the price of scrip of Sobha post the corporate announcement of Real Estate Operation Update dated October 06, 2017. I note from corporate announcements made by Sobha in the website of BSE and NSE that Real Estate Operation Update dated October 06, 2017 was released on October 06, 2017, post market hours. I note that the price of the scrip had risen substantially in the subsequent trading days (i.e. on October 09, 2017, the closing price at BSE- Rs. 459.45 (17.43% increase from previous closing) and NSE- Rs.460.00 (17.39% increase from previous closing) after the corporate announcement. The details of price movement as noted from the website of BSE and NSE are as given hereunder:

BSE

Date	Open	High	Low	Close	WAP	No. of Shares	No. of Trades	Total Turnover
5/10/17	394.50	397.65	391.50	393.45	393.81	3,630	214	14,29,522
6/10/17	391.50	393.00	387.30	391.25	390.33	8,343	244	32,56,533
9/10/17	411.00	469.50	411.00	459.45	450.00	3,74,234	9,475	16,84,04,676
10/10/17	458.00	461.45	430.10	436.75	446.02	1,01,699	3,198	4,53,60,262
11/10/17	445.20	454.00	412.55	421.25	435.19	67,660	2,276	2,94,45,131

NSE

Date	Prev Close	Open	High	Low	Close	Total traded quantity	No. of Trades	Turnover

5/10/17	392.65	391.25	397.70	389.00	393.65	29,376	2,451	1,15,67,876.25
6/10/17	393.65	393.15	394.00	387.00	391.85	1,17,460	6,237	4,58,43,223.40
9/10/17	391.85	411.00	470.20	411.00	460.00	31,42,118	65,327	1,41,44,29,927.80
10/10/17	460.00	456.00	461.90	431.75	437.45	7,97,595	21,270	35,66,80,775.80
11/10/17	437.45	444.00	455.00	415.75	420.50	7,04,284	18,598	30,83,33,472.00

18. Noticee in this regard has contended that increase in the price and volume of the scrip on October 09, 2017 and October 10, 2017 cannot be attributed to Real Estate Operation Update dated October 06, 2017, instead the price increase could be due to other reasons. I note that even though Noticee has contended that price increase in the scrip can be due to other reasons he has not specified/listed out any other reason for such price increase. I note that the fact that price of the scrip of Sobha increased substantially after Real Estate Operation Update dated October 06, 2017 become public, also strengthens the fact that aforementioned update was price sensitive in nature. Therefore, I conclude that information contained in Real Estate Operation Update dated October 06, 2017 is an UPSI as per Regulation 2(1)(n) of PIT Regulations.

19. Noticee in his reply to SCN has contended that Sobha gives regular updates on the real estate operations of the company on a quarterly basis and such practice is followed by many other industries as well. Noticee in this regard contended that Real Estate Operational updates were not a part of the financial results of the Company but were in nature of press release for providing transparent and timely information to the market/general public. Noticee has also contended that revenue from the sales as reported in the real estate operational updates are not necessarily recognised/formulated as revenue for the quarter and there are certain revenue recognition guidelines based on which, the revenue is recognized in the quarterly P&L Account and therefore, is not price sensitive information.

20. With regard to above contention of Noticee, I note that it has already been established that information on sales performance of the Company during a quarter has the potential to materially affect the price of securities. The fact that some of the sales may not necessarily have been recognized by company as revenue does not take away the fact that information relating to Real estate operational update has the potential to materially affect the price. Therefore, I am not inclined to accept the aforementioned contention of Noticee.

21. With regard to contention of Noticee that real estate updates were not part of financial results of company and thereby cannot be considered as UPSI, I note that definition of "UPSI" under Regulation 2(1)(n) of PIT Regulations is an inclusive one and is not restricted to financial results. This means that if the information relating to company or its securities is not generally available and has the potential to materially impact the price of securities, the same would be termed as "UPSI". I note that fact that Sobha has not recognized real estate operational update dated October 06, 2017 as UPSI does not take away the fact that Real estate operational update dated October 06, 2017 is an UPSI as already established. Further, with regard to Noticee's contention that trading window was open at the time of his impugned trades and he had obtained necessary pre-clearance for his trades, I note that Noticee, being the Vice Chairman and Managing Director of Sobha, ought to have known that Real estate operational update dated October 06, 2017 was price sensitive in nature. The fact that Sobha did not consider real estate operation update as an UPSI and thus did not close the trading window at the relevant time cannot be used by Noticee to substantiate his stand that Real Estate Operation Update dated October 06, 2017 is not UPSI. Therefore, I am not able to accept the aforementioned contention of Noticee.

22. I note that during the investigation, the chronology of events with Real Estate Operation Update dated October 06, 2017 was obtained from the company. After perusing the replies received from the company vide its letters dated August 22, 2019, September 26, 2019, October 16, 2019, e-mail dated November 22, 2021 November 24, 2021 and December 21, 2021, I observe the following chronology of events with respect to the said corporate announcement:-

Sl No	Event	Date
1	The details of the operations were received by Mr. K. Balamurugan, Senior Manager – Investor Relations, on daily basis. The consolidation of such data (i.e. Real Estate Operational Update) was done after the quarter end.	October 01, 2017 to October 06, 2017
2	Approval of the "Real Estate Operational Update" by Mr. J C Sharma, Vice Chairman and Managing Director.	October 06, 2017
3	Internal circulation of the "Real Estate Operational Update" for further action- such as submission to the Stock Exchanges and uploading on the website of the company.	October 06, 2017
4	Submission of the "Real Estate Operational Update" to the Stock Exchanges by Mr., Vigneshwar G Bhat, Company Secretary and Compliance Officer	October 06, 2017
5	Uploading of the "Real Estate Operational Update" on the website of the company by the Corporate Communication team.	October 06, 2017
6	**Sobha Ltd. letter to BSE and NSE intimation of Real estate operations update for the quarter ended September 30,2017**	October 06, 2017

7	NSE disseminated the details under corporate announcement	October 06, 2017 (Time-16:57:00 (NSE))
8	BSE disseminated the details under corporate announcement	October 06, 2017 (Time-16:43:38 (BSE))
9	Operational results placed before the Board.	November 10, 2017

23. I note that the company vide its reply dated August 22, 2019 had submitted that, the information on the real estate operation update dated October 06, 2017 was prepared on the basis of MIS received from various locations where the company operates and at the end of each quarter, a detailed consolidated report on the operation is prepared and submitted to the stock exchanges. I also note that company in its submission to SEBI during investigation had also stated that the MIS disclosure was extracted from the ERP system (Enterprise Resource Planning) of the company by Mr. Balamurugan, Senior Manager – Investor Relations. I note from the replies submitted by the company that the details of the operations for consolidation of data for preparation of the real estate operational update were received by Mr. Balamurugan, on daily basis starting from October 01, 2017. Therefore, I find that October 01, 2017 can be considered as the date when UPSI came into existence. I note that corporate announcement regarding real estate operational update for the quarter ended September 30, 2017 was intimated by Sobha Ltd to BSE on October 06, 2017 at 16:43:29 and to NSE at 16:57:00. I further note that BSE disseminated the corporate announcement with regard to real estate operational update for the quarter ended September 30, 2017 on October 06, 2017 at 16:43:38 and NSE disseminated the same at 16:57:00. Therefore, I note that UPSI became public on October 06, 2017 at 16:43:38. In light of the above, I find that UPSI period was from October 01, 2017 to October 06, 2017.

24. At this juncture, I find it pertinent to note the definition of terms “connecter person” and “insider” under PIT Regulations and same is reproduced hereunder:

> *(d)"connected person" means,-(i)any person whois or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being inany contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information oris reasonably expected to allow such access……………………………………*
>
> *(g) "insider" means any person who is:*

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

25. I note from the submissions of the Company that Mr. Balamurugan, Sr. Manager, Investor Relations, had finalized the operational updates and the same was placed before Noticee on October 06, 2017 for review and approval. I also note that it is an admitted fact that Noticee was in possession of UPSI, from October 06, 2017.

26. Additionally, I note from available records that Noticee was Vice Chairman and Managing Director of Sobha, as well as one of the audit committee members of the company. I also note that Noticee was a designated employee of Sobha. Further, Noticee in his reply has submitted that being the Managing Director of the Company he would be interested in knowing the performance of the Company on a regular basis and he would hold operational updates with the team on regular intervals to push up sales and to strategise our business operations to achieve the targets and results. Therefore, on the basis of the aforesaid observations, I find that Noticee was an insider as well as connected person as defined under Regulation 2(1)(g) and 2(1)(d) of PIT Regulations respectively of Sobha.

27. As already noted earlier on the Order, On October 06, 2017, Real Estate Operation Update dated October 06, 2017 was placed before Noticee for finalization. I note from the trade details as obtained from NSE that Noticee i.e. Mr. Jagdish Chandra Sharma had bought 3000 shares with the value of Rs.11,73,242/-on October 06, 2017 i.e. during the UPSI period. I note that Noticee placed his buy orders at 14.10.58 and trades got executed between 14.10.58 to 14.21.16. The trading details of Mr. Jagdish Chandra Sharma on NSE are as follows:

Date	**Buy Qty**	**Wt. Avg. Buy Price(in `)**	**Sell Qty**	**Wt. Avg Sell Price(in `)**
Prior to UPSI period(September 01, 2017 to September 30, 2017)				
No trades observed related to Sobha Ltd.				
During UPSI Period(October 01, 2017 to October 06, 2017)				
October 06, 2017	3000	390.49	0	0
Post UPSI Period(October 07, 2017 to November 30, 2017)				
No trades observed related to Sobha Ltd.				

28. Further, I note from material available on record that no trading had been done by Mr. Jagdish Chandra Sharma during pre UPSI period (September 01, 2017 to September 30, 2017) and post UPSI period (October 07, 2017 to November 30, 2017). I note that aforementioned trades was also admitted to by Noticee in his reply to the SCN. Therefore, I conclude that Noticee, being an insider, had traded in the scrip of Sobha when in possession of UPSI.

29. Regulation 4 of the PIT Regulations prohibits any insider from trading in securities while in possession of UPSI. The proviso to Regulation 4 of the PIT Regulations however gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. I note that the words “including” under the proviso to Regulation 4 is inclusive and is not exhaustive. It is not confined to the circumstances provided under Clause (i) to (vi) of the proviso to Regulation 4(1) of the PIT Regulations. There could be other circumstances on the basis of which the insider could prove his innocence. In this regard, I note that once it has been proved that an insider had traded in securities while in possession of UPSI, it is upon him to prove that said trades were not motivated by UPSI.

30. Noticee has contended that he had bought the shares only on October 06, 2017 and he had been buying and selling shares of Sobha from time to time after observing all the procedures mandated by the PIT Regulations, like pre-clearance, no contra trade, disclosures and trading only when the Trading Window is open. I am of the view that the fact that Noticee had traded after obtaining necessary pre clearance and had made requisite disclosures is not enough to show that his trades were not motivated by UPSI/or his innocence. Further, Noticee has not provided any reason/explanation in his reply to SCN as to why he had traded on October 06, 2017 i.e. just before UPSI became public. I am of the view that the fact that Noticee bought shares of Sobha on the very day that the real estate operational update were approved by him and released to the public and there were no trades prior to pre UPSI period (September 01, 2017 to September 30, 2017) and post UPSI period (October 07, 2017 to November 30, 2017) also shows that Noticee’s trades was motivated by UPSI.

31. I note that SCN has considered that Noticee as an insider had made unlawful gain as a result of his trading in the scrip of Sobha as given below:

Sr. no.	**Name**	**No of shares bought in possession of UPSI**	**Closing price on the day UPSI become PSI (#)**	**WAPP(weighted average purchase price) (@)**	**Total purchase value (in ₹)**	**Notional purchase value (in ₹)**	**Unlawful gain (in ₹)**

		Exchange	A	B	C	D (A*B)	E (A*C)	F=D-E
1	**Mr. Jagdish Chandra Sharma.**	**NSE**	**3000**	**460.00**	**390.49**	**13,80,000**	**11,71,470.00**	**2,08,530.00**

(# - Closing price of October 09, 2017 was considered for calculation of profit).
(@ - total trade value divided by (/) no. of shares purchase during UPSI).
Unlawful gain = {No. of shares bought while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange}.

Less (-)

{No. of shares bought while in possession of UPSI X weighted average purchase price}

32. With regard to the above, Noticee contended that he had not made any profit as he had not sold the shares till May 27, 2019 and the market has gone up and down between this period. Noticee has contended that profit calculated by SEBI was only on notional basis and not on actual basis. With regard to the aforementioned contention of Noticee, I am of view that fact that Noticee had brought shares in Sobha before there was substantial increase in price of shares of Sobha shows that Noticee had made gain out of the UPSI in his possession irrespective of the fact that Noticee had not immediately sold his shares after UPSI become public.

33. In light of observations in preceding paragraphs, I find that allegation in the SCN that Noticee i.e. Mr. Jagdish Chandra Sharma had traded in the scrip of Sobha Ltd. while in possession of UPSI and had violated Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations stands established.

Issue No. II- Does the violation attract monetary penalty under Section of SEBI Act?

34. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......*".

35. Therefore, in view of the above judgments and considering that Noticee violated provisions of Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15G(i) of SEBI Act. The text of Section 15G(i) of SEBI Act is reproduced below:

SEBI Act

Section 15G(i) of SEBI Act:

Penalty for insider trading.

15G. *If any insider who,—*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

……………………………

……………………………..

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Issue No.III - What should be the quantum of monetary penalty?

36. While determining the quantum of penalty under Section 15G(i) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- 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.

Explanation*- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

37. In this context, I also find it pertinent to refer to decision of the Hon'ble Supreme Court in Adjudicating officer, SEBI vs. Bhavesh Pabari, decided on February 28, 2019, wherein it is held that "...*We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be*

circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty..."

38. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act and principles laid down by Hon'ble Supreme Court of India in Adjudicating officer, SEBI vs. Bhavesh Pabari, stated as above. In the instant case, I note from the material available on record that Noticee had made a notional gain of Rs. 2,08,530. Further, I note that the evidence on record does not indicate that the aforesaid violation of Noticee is repetitive in nature. From available records, I am also unable to quantify the loss caused to investors as a result of violation committed by Noticee. Nevertheless, I am of view that insider trading, being a serious charge, deserves penalty commensurate with offence.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 10,00,000/-(Rupees Ten Lakh only) on Noticee i.e. Mr. Jagdish Chandra Sharma, under the provisions of Section 15G(i) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

40. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

41. Noticee shall forward said Demand Draft or details/ confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	

4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

42. 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 of Noticee.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: October 28, 2022 **ADJUDICATING OFFICER**