

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of interim order -cum- show cause notice dated June 17, 2014 in the matter of Haldhar Realty and Enterprises Limited.

In respect of:

Sr. No.	Noticees	PAN
1	Haldhar Realty and Enterprises Limited	AACCH1630A
2	Mr. Arvindkumar Lunkaran Vaktharia	ADLPV5355P
3	Ms. Anita Arvindhbai Vaktharia	ACXPV0260G
4	Mr. Lunkaran Kachraji Vaktharia	AHOPV2197A

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide an ex-parte ad-interim order dated June 17, 2014 prima facie observed that Haldhar Realty and Enterprises Limited (Haldhar) and its Directors, namely, Mr. Arvindkumar Lunkaran Vaktharia, Ms. Anita Arvindhbai Vaktharia and Mr. Lunkaran Kachraji Vaktharia (the company and its directors hereinafter collectively referred to as the “noticees”) were illegally mobilizing funds from the public through schemes in the nature of Collective Investment Schemes (“CIS”) without obtaining certificate of registration from SEBI and thus contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with Section 11AA of the SEBI Act, 1992 and regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (CIS Regulations). It was also observed that the fund mobilization activity of Haldhar through its various schemes prima facie amounted to fraudulent practice under regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities
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Market) Regulations, 2003 (PFUTP Regulations), as amended with effect from September 06, 2013.

2. In view of the prima facie findings against the Noticees, they were directed not to collect any money from investors under their existing scheme and not to launch any new scheme. The interim order also prohibited them from diverting any fund raised from the public and not to dispose or alienate any property or assets related to the schemes offered by Haldhar. The noticees were asked to furnish the full inventory of the assets owned by Haldhar out of the amounts collected under the schemes and to furnish scheme wise details of investors, amounts mobilized from them and amounts refunded. The interim order also required the Noticees to file their reply, if any, to the prima facie observations made therein.
3. The said interim order was served upon the noticees. The company vide letter dated July 9, 2014 requested for an opportunity to inspect the documents referred to and relied upon in the interim order. Accordingly, vide letter dated July 28, 2014, an opportunity to inspect the documents was granted to the noticees on August 7, 2014. The company vide letter dated August 8, 2014 sought another date for inspecting the documents. Acceding to the request of the Noticees, the inspection of documents was rescheduled to August 21, 2014. Mr. Arvindkumar Lunkaran Vaktharia, MD of Haldhar, Shri Yasin S Gupte, Manager (Admin) of Haldhar and Shri Deepak Vrajilal Raval, Authorised representatives of Haldhar inspected the documents on August 21, 2014. As the Noticees had not furnished their reply, a reminder letter dated January 6, 2015 was sent to the company advising them to submit reply to the interim-order-cum-show cause notice. The company filed its reply vide letters dated February 19, 2015 and March 26, 2015. The summary of the reply is as under:
 - i. Mr. Hitesh C Prajapati, i.e. the persons on whose complaint SEBI has initiated the proceedings against the Noticees, has withdrawn the subscription and the company has paid him Rs.18,921/- by cheque dated September 20, 2014. The payment has been accepted by him and he has discharged the company. Copy of the cheque duly received by Mr. Prajapati and a copy of the document withdrawing subscription have been furnished.

- ii. Haldhar Realty and Enterprises Ltd. is a company promoted by Mr. Arvindkumar Lunkaran Vakthariain and its other Directors, namely, Mrs. Anita A Vaktharia (wife of Mr. Arvindkumar Lunkaran Vakthariain) and Mr. Lunkaran K Vaktharia (father of Mr. Arvindkumar Lunkaran Vakthariain). The company was incorporated in the year 2009 with a view to enable small and marginal people to form a habit of saving by contributing an amount as low as Rs.100/- per month regularly and earn a reasonable return on their contributions at the end of expiry period. The contributions were used by the company to buy land, flats and offices etc. for the benefit of the investors. The company also extended pre-mature withdrawal facility to its subscribers.
 - iii. The company believed that the activities/schemes of the company were valid, tenable and legal at the relevant time.
 - iv. Without admitting that the schemes are covered under CIS Regulations, it has been submitted by the Noticees that they have stopped operating the alleged collective investment schemes from November 2012 and not a single deposit /subscription/fund has been accepted after July 31, 2013.
 - v. The company has been reducing its liabilities. As per audited balance sheet “Other long term liabilities” of the company in the year 2012-13 was Rs.25,35,51,171 which was reduced to Rs.20,41,93,190 in financial year 2013-2014. Copy of audited balance sheets for the year ended March 31, 2013 and March 31, 2014 have been submitted.
 - vi. It has been submitted that their dealings were fair and transparent and they have acted in good faith. Their activities were not fraudulent and they have not violated the provisions of regulations 4(2)(t) of the PFUTP Regulations which has been inserted in the PFUTP Regulations with effect from September 6, 2013.
 - vii. List of investors, certificate number and amount paid and outstanding as on March 31, 2014 has been furnished in a CD.
 - viii. List of properties of the company as on March 31, 2014 has been furnished.
 - ix. It has been urged that they may be permitted to sell/dispose of the real estate assets of the company so as to enable them to repay the investors. It has been also urged that they may be granted two to three years’ time to do the same as sudden sale will result in less realization and will adversely affect investors.
4. Noticees were granted an opportunity of hearing on May 19, 2017. The company vide letter dated April 24, 2017 requested for an adjournment of the hearing as their counsel was

unavailable and requested for hearing after June 5, 2017. The Noticees were granted another opportunity of hearing on August 4, 2017. Noticees again requested for an adjournment of the hearing. Therefore, the hearing was rescheduled to August 9, 2017. No one appeared for the hearing. Thus, being convinced that the noticees were granted sufficient opportunity to present their case, I am proceeding with the matter on the basis of the material available on record.

5. It is also noted that during the preliminary inquiry into the matter, Haldhar furnished the following details and documents vide letters dated July 22, 2013 and December 3, 2013:

- Number of plans/schemes launched by it and the "Rule Book" containing the details and structures of various plans/schemes offered,
- Sample copy of "Application Form cum Agreement" for the purchase and development of plot,
- Sample copy of a booklet containing Application Form, Agreement for Joint Venture Association and Allocation Letter,
- Copies of Memorandum and Articles of Association,
- Number of investors and amount collected,
- Details of scheme wise amount mobilized along with number of investors under different schemes,
- Certified copy of audited financial statements for Financial Years 2010-11, 2011-12 and 2012-13,
- Copy of Income Tax Returns.
- Vide letter dated July 22, 2013 the company also submitted that it has already closed the scheme for collecting funds with effect from November 2012.

6. I have taken into consideration the observations in the interim order and the material available on record. The issue for determination is whether the mobilization of funds by Haldhar under its various schemes/plans for 'purchase of plots of land and its development' falls under the ambit of 'collective investment scheme' in terms with section 11AA of the SEBI Act, 1992. Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a '*collective investment scheme*', reads as under :

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

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

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

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

(3) ...”

7. It is observed from the above that in a case where the payments or contributions of the investors are pooled and utilized for the purpose of a scheme with the promise of returns and the scheme being such that it is managed by the person collecting such contributions to the exclusion of the investors in its day to day affairs, it would qualify to be a CIS under the SEBI Act. Thus in terms of the provisions in Section 11AA of the SEBI Act, it is necessary to examine the scheme of 'purchase of plots of land and its development' offered by Haldhar to ascertain whether it falls within the ambit of a CIS or not.
8. The activity of collection of funds from the public were carried out by Haldhar through its various branches spread across three states. Vide letter dated July 22, 2013, Haldhar has submitted that it collected money from 76,179 investors and its liability as on March 31, 2013 was Rs.25,35,51,171/-. The amounts were collected from the investors by offering them various schemes, which Haldhar called 'Joint Venture Schemes'. The details of the schemes for the purchase of plot of land and its management and development were mentioned in the

Rule Book and pamphlet issued by the company. The different schemes provided different payment schedule and terms of payment and the contribution amount also depended upon the unit size of plot. The schemes can be mainly categorized as follows:

- Joint Venture Installment Payment Plans,
- Joint Venture One-time Payment Plans.

9. There were four installment payment schemes (Plans A, A1, B, and B1) where payments were collected on monthly, quarterly, half yearly and yearly basis with tenure ranging between 3 to 6 ¼ years. Under the one-time payment schemes or cash down payment schemes (Plans C, D, E and F) the company collected money from the investors in a single payment and it provided a specific return to investors after a term ranging from 3 years to 11 years. An 'expected cost of developed land' or estimated realizable value was also indicated against each plan. All plans also provided a certain amount as accidental death compensation. One such plan is illustrated below:

PLAN NO.'A'		Duration of Payment - 3 years					
Appx. Sq. Ft	Consideration	Installment				Expected value of developed land	Accidental Death compensation (Rs)
		MLY (Rs.)	QLY(Rs.)	HLY(Rs.)	YLY(Rs.)		
36	3600	100	295	580	1150	4500	3600
72	7200	200	290	1160	2300	9000	7200
108	10800	300	885	1740	3450	13500	10800
180	18000	500	1475	2900	5750	22500	18000
360	36000	1000	2950	5800	11500	45000	36000

10. An investor has to choose between various plans offered by Haldhar while applying for the same in the prescribed form and Haldhar executes an "Agreement for Joint Venture Association" with the investor (referred to in the agreement as customer/joint venture associate). At the time of entering into the agreement, the investor pays instalment amount or one-time payment amount as the case may be. As per the agreement, even after making a minimum payment of 50% of total consideration in case of installment plans or total consideration amount in a cash down payment schemes, an investor is only given an "Allocation Letter" and no actual possession of the plot of land is transferred to the investor. Thus, though there is ostensible allotment of plot, no actual possession of property or any individual ownership right is given to any investor, by way of execution of the agreement. The

investor authorizes Haldhar to develop the plot of land or work upon agricultural land which are with the company. It is also noted from the Agreement for Joint Venture Association that Haldhar is *“authorize (d) to invest or otherwise employ the money belonging or entrusted to company in movable or immovable properties or in securities or in such other manner as may be deemed expedient.”* In terms of the agreement, only the company looks after the financial side of the participation plans. Thus, the land is held by the company in common on behalf of the investors and the company has exclusive right to employ the money collected from the investor and investors are not provided with specific details in respect of the utilization of the money collected from them. Further, the agreement also mentions that *“at the end of maturity period the joint venture will be entitled to withdraw/ renew the said certificate amount and the said company will permit towards repayment of the certificate amount or renew the said certificate as per the company’s rule and regulations, terms and conditions as mentioned in the certificate, rule book and terms of this agreement.”* In view of the aforesaid, it is evident that Haldhar runs a money mobilization scheme rather than a sale/purchase of land/plot and its development and the contribution or investments received from individual investors are pooled and utilized for the purpose of the 'scheme' offered by Haldhar.

11. From the various 'Joint venture schemes' offered by Haldhar, it is observed that an 'expected cost of developed land' or return is mentioned against each payment options in all the said schemes. Further, as per the agreement for Joint Venture Association, Haldhar has promised the investors that irrespective of the gain or loss suffered by the company, it will make payment to them on maturity of their investment plan. Hence, it is clear that the contributions were made by the Joint Venture Associates with a view to receive some profits/ income.
12. In terms of the Agreement for Joint Venturer Association, Haldhar is authorized to invest or employ the money collected from the investors in movable or immovable properties or it may invest in securities or in any other manner as it considers expedient. On maturity as per the plan opted, Haldhar assures to pay the amount collected from the investors along with the interest/return. It is also noted that Haldhar allots land/plot as collateral security for realization of amount due to an investor after maturity by issuing an Allocation Letter and the allotment of plot of land stands automatically cancelled once repayment of participation amount is made by Haldhar to the "joint venturer"/investor. It is also observed from the agreement that management of financial affairs of the company relating to schemes/plans for which money is mobilised from joint ventures/ investors is with the company and the investors do not have

any right to interfere with the management and policies of the company. Therefore, it is clear that the investors at any stage, neither manage the property or the contributions forming part of the scheme nor do they have day to day control over the management and operations of the schemes offered by Haldhar.

13. Thus, I conclude that the schemes of purchase of plot of land and its management and development offered by Haldhar and its directors fulfill the conditions of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act and therefore was required to be registered as mandated under section 12(1B) of the SEBI Act and the CIS Regulations. The launching/ floating/ sponsoring/ causing to sponsor any collective investment scheme and mobilization of funds from the public under such scheme can be done by any person only after obtaining requisite registration under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that Haldhar has not obtained any certificate of registration from SEBI under the CIS Regulations for its fund mobilizing activity from the public, for the 'Schemes' offered by it.
14. The Noticees have stated in their replies that they have stopped operating the schemes offered by them from November 2012 and not a single deposit /subscription/fund has been accepted after July 31, 2013. Therefore, it has been submitted they have not violated the provisions of regulations 4(2)(t) of the PFUTP Regulations which came into force on September 6, 2013. In this regard, it is observed from the renewal subscription receipt ledger for certificate no. 0100B0002862, available on record that Haldhar has collected installment amount under a scheme offered by it even on August 21, 2014. Thus, they have operated the scheme after the enforcement of the provisions of regulation 4(2)(t) of the PFUTP Regulations. As the fund mobilizing activity was carried out by Haldhar through its various schemes without obtaining the necessary registration, it was illegal and amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the PFUTP Regulations.
15. From the audited financial statements of Haldhar for the FY 2010-11, 2011-12 and 2012-13, it is observed that the amounts mobilized under the schemes have been recorded in the relevant Balance Sheet under the heads "Current Liabilities" & "Long Term Liabilities". The same is reproduced below:

Particulars	As on March 31, 2013 (in ₹ Crores)	As on March 31, 2012 (in ₹ Crores)	As on March 31, 2011 (in ₹ Crores)	As on March 31, 2010 (in ₹ Crores)
Current Liabilities (i) Joint Venture Funds	25.35*	41.36*	18.63	40.11

* shown as Long Term Liabilities

16. Haldhar, vide letter dated July 22, 2013 submitted that it has collected money from 76,179 investors and its liability as on March 31, 2013 is ₹25,35,51,171/-. Vide letter dated February 19, 2015, it has been submitted that as per audited balance sheet “Other long term liabilities” of the company in the financial year 2013-14 have been reduced to ₹ 20,41,93,190. It is pertinent to mention here that though the company has provided list of investors and amount refunded to them etc., it has not provided proof of refund and certificate of chartered accounts in this regard. In such circumstances, the number of investors who have been refunded in full cannot be ascertained from the available records.
17. It is also noted that the company has requested for permission to sell/dispose of the real estate assets of the company so as to enable them to repay the investors. For this purpose, they have requested for time of two to three years, without proposing a roadmap for refund. In fact, the noticees have not even appeared for the personal hearing to make submissions with respect to refunds and hence the request for extended time to make refund does not merit consideration.
18. From the material available on record, it is observed that Mr. Arvindkumar Lunkaran Vaktharia was the promoter and Managing Director of Haldhar, Ms. Anita Arvindbhai Vaktharia (wife of Arvindkumar Lunkaran Vaktharia) and Mr. Lunkaran Kachraji Vaktharia (father of Arvindkumar Lunkaran Vaktharia) were directors of Haldhar since its inception. These persons were in charge of and responsible for the day to day affairs of the company as directors.
19. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 read with regulation 65 of CIS Regulations hereby issue the following directions:
- Haldhar Realty and Enterprises Ltd. and its Directors viz., Mr. Arvindkumar Lunkaran Vaktharia, Ms. Anita Arvindbhai Vaktharia and Mr. Lunkaran Kachraji Vaktharia shall

abstain from collecting contributions/payments, either directly or indirectly, from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been so identified in this Order.

- ii. Haldhar and its directors are jointly and severally liable to wind up its existing collective investment schemes and refund the contributions or payments collected from investors under the schemes with returns due to the investors within a period of three months from the date of this order. Upon completion of the refund as directed above, within a further period of seven days, Haldhar and its directors shall submit a winding up and repayment report to SEBI in accordance with the CIS Regulations. In the event of failure by Haldhar and its noticee directors to comply with the said directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.
 - iii. Haldhar and the noticee directors shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the company except for the purpose of making refunds to its investors as directed above.
 - iv. Haldhar and the noticee directors are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complied with, as mentioned above, to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and thereafter for a further period of four years from the date of completion of the refund, as directed above.
 - v. The noticee directors are restrained from holding position as director or key managerial personnel of any listed company for a period of 4 years from the date of this order.
20. This order shall come into force with immediate effect. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: February 15, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER