

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under section 11(4) read with 11B of the Securities and Exchange Board of India Act, 1992 in respect of (1) Ritesh Properties and Industries Ltd., (2) Mr. Sanjeev Arora, (3) Mr. Pran Arora, (4) Mr. Roop Kishore Fatehpuria, (5) Mr. Rajiv Arora, (6) Mr. Surinder K. Sood, (7) Mr. Ashish Aggarwal and (8) Mr. V. P. Chhabra

In the matter of Ritesh Properties and Industries Limited.

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1. Ritesh Properties and Industries Ltd. (hereinafter referred to as 'Ritesh Properties' or 'the company') is a company incorporated under the Companies Act, 1956 having its registered office at 11/5B, 1st floor, Pusa Road, New Delhi – 110 005. Ritesh Properties was originally incorporated as Ritesh Industries Ltd. in 1987 and subsequently changed to its present name on February 28, 2007. The shares of Ritesh Properties are listed at Bombay Stock Exchange Limited (hereinafter referred to as “BSE”).
 2. SEBI conducted investigation into the dealings of the scrip of Ritesh Properties for the period July 14, 2006 to May 20, 2008 (hereinafter referred to as the “investigation period”). Investigation revealed that:
 - i. During the investigation period there were seven directors of the company, namely, Mr. Sanjeev Arora (Managing Director), Mr. Pran Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv Arora, Mr. Surinder K. Sood, Mr. Ashish Aggarwal and Mr. V. P. Chhabra, and was promoted *inter alia* by Shri Pran Arora (Chairman) and Shri Rajiv Arora (Director).
 - ii. Immediately before the investigation period, i.e. on July 13, 2006 the shares of the company was trading at a price of around ₹3.52 and that day’s trading volume was 5,440 shares. Further, just after the investigation period i.e. on May 21, 2008, the closing price of the scrip was at ₹123.50 and the trading volume for the day was 71,702 shares. It was observed that the price and trading volume of the company's shares had substantially increased from July 13, 2006 to May 21, 2008.
 - iii. Ritesh Properties had published misleading announcements regarding its projects and had delayed the requisite disclosure to Stock Exchange, details of which are as follows:
 - a) On July 14, 2006, Ritesh Properties entered into a detailed Collaboration Agreement with Ansal Townships and Projects Ltd. (hereinafter referred to as “Ansal”) to start a joint venture project in Ludhiana comprising of 60% industrial

park and 40% residential area. Ritesh Properties' board of directors approved the joint collaboration agreement on August 12, 2006 and following the same, a disclosure was made through BSE on August 16, 2006. However, the relevant and significant details like the projected networth and profits from the same would be around ₹800 crores and ₹150 crores, respectively (as compared to the then net profit of ₹ 7.18 crore for the company in FY 2006-07) were not disclosed until January 08, 2007. It was therefore observed that Ritesh Properties selectively disclosed the relevant information and suppressed certain other information

- b) The company disclosed the relevant information/details about the projected net worth and profits on January 08, 2007, i.e. only after the prices for preferential allotment to certain connected entities had been fixed during the month December 2006. The board of directors of Ritesh Properties had resolved to go for preferential allotment to its related entities, Shree Atam Vallabh Poly Plastic Industries Pvt. Ltd. (hereinafter referred to as "Shree Atam") and Vishal Concast Ltd.(hereinafter referred to as "Vishal Concast"), on December 23, 2006. It was observed that the agreement entered on July 14, 2006 had finalized the terms of revenue sharing between the parties, which definitely could not have been done without the estimates on profitability and net worth. From the facts above, it was observed that the company and its directors deliberately suppressed the relevant information of projected net worth and profits till January 08, 2007 to manipulate the price of the shares of the company.
- c) On January 8, 2007, the announcement made by the company *inter alia* mentioned that "The Punjab Government had already approved the project of the company as a Mega Project and all requisite approvals including approval of drawings and other approvals for the said project have been obtained". However, the investigation revealed that the crucial permission from Punjab Pollution Control Board was actually received only in February 2009. SEBI advised Ansal to inform about the status of construction work undertaken in the project. Ansal in its submission dated September 24, 2009 stated that only the basic infrastructure work was being done. The details of the approval and the status of the project as reflected in the notes to accounts of Financial Statements disclosed on the website of BSE (www.bseindia.com) indicated that the delay in signing of the agreement with Punjab State Government resulted in non-commencement of the development of the Project. From the above facts, it was observed that Ritesh Properties's announcement made on January 08, 2007 about status of approvals and commencement of project was false and misleading.
- d) On February 2, 2008, Ritesh Properties made an announcement about their board of director's decision to issue 1,92,308 equity shares of face value of ₹ 10/- each at

a premium of ₹120/- to NDTV Ltd. (NDTV). After the announcement, price of the scrip increased from ₹ 84.7 to ₹ 99 by February 07, 2008. However, subsequently, on April 01, 2008, when NDTV informed Ritesh Properties about its withdrawal of subscription from the proposed preferential equity allotment, Ritesh Properties did not disclose the withdrawal to the stock exchanges in a similar manner. It was observed that Ritesh Properties deliberately suppressed the relevant information and selectively disclosed the information with a view to mislead the investors.

- e) In press release dated May 17, 2008, Mr. Sanjeev Arora, (Managing Director) made an announcement in relation to their business in retailing women's apparel, that they had plans to open 500 outlets of Femella Fashions in the next 5 years and 50 stores by 2007-08. In another press release dated May 31, 2008, Mr. Sanjeev Arora again announced that they had aggressive retail expansion plans. These two announcements were again disseminated by Ritesh Properties through BSE as its corporate announcements on May 21, 2008 and June 02, 2008, respectively. The price of the scrip shot up steadily from ₹121.40 to ₹132.60 between these two announcements. However, it was observed that both the announcements were misleading, as there were merely five outlets of Femella Fashions in 2009 as against Ritesh Properties's announcement of 500 outlets.
 - f) In view of the above, it was observed that the Ritesh Properties and its directors fraudulently dealt in the securities of the company and indulged in manipulation of the price of the scrip of the company.
- iv. Ritesh Properties had made irregular preferential allotment to its related entities, details of which are as follows:
- a) Preferential allotment of Ritesh Properties shares approved on December 23, 2006:
 - (i) On December 23, 2006, shareholders of Ritesh Properties passed a resolution in the Extra Ordinary General Meeting (EGM) to allot 12,50,000 shares each to Shree Atam and Vishal Concast at ₹ 20, on preferential basis, as per the pricing formula prescribed in the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (DIP Guidelines). However, the allotment was not made within prescribed 15 days time. Another EGM was convened on February 28, 2007 and the same resolution to allot shares at ₹20 per share, on preferential basis was passed again. Finally, the preferential allotment was made only on March 23, 2007 which was not only after the expiry of validity of the resolution but also at the price fixed on December 23, 2006. The said preferential allotment was observed to be in violation of the DIP Guidelines.

- (ii) The allotment price of ₹20 was a hugely discounted price as the scrip of Ritesh Properties was trading around ₹43.85 when the actual allotment took place. Further, if Ritesh Properties had to follow the procedure for pricing, considering the fact that the allotment actually took place on March 23, 2007, the AGM/EGM ought to have been held within a period of 15 days prior to the date of allotment, i.e., between March 08, 2007 and March 22, 2007, whereas the EGM approving the preferential allotment had held on December 23, 2006. Further, the allotment price accordingly should have been in the range of around ₹83-₹89 per share.
 - (iii) Further, Shree Atam and Vishal Concast were related entities to Ritesh Properties by a common person named Mr. Roop Kishore Fatehpuria, who was the compliance officer and one of the directors of Ritesh Properties. Mr. Roop Kishore Fatehpuria acted as an authorized signatory for both Shree Atam and Vishal Concast as per the KYC forms available with the broker, Almondz Capital Market Ltd. Further, Ritesh Impex Pvt. Ltd. which is another company, promoted by Mr. Sanjeev Arora held 20% of the total shareholding in Vishal Concast.
 - (iv) Therefore, it was observed that by allotting the shares at ₹ 20, Ritesh Properties offered a discount of about ₹63-69 per share to the allottees, which were related to Ritesh Properties. Therefore, it was observed that by extending monetary favour to related entities, Ritesh Properties and its directors defrauded the other investors of the company.
- b) Preferential allotment of share warrants by Ritesh Properties based on the Resolution dated September 29, 2007:
- (i) In the AGM held on September 29, 2007, the shareholders passed a resolution to allot 40,00,000 share warrants of face value of ₹10/- each at a premium of ₹45/- under non-promoter quota to eight companies. However, the allotment of warrants was done only on November 26, 2007, i.e. after 42 days after the expiry of shareholder's resolution and therefore it was observed that the allotment was in violation of the DIP Guidelines.
 - (ii) Further, Shivalik Securities Ltd., one of the recipients of share warrants was observed to be a related entity to Ritesh Properties as Ritesh Properties held 4,10,000 shares (15.76%) in Shivalik Securities Ltd.
- c) It was observed from the above facts and circumstances that there was a concerted effort by Ritesh Properties and its directors to publish misleading corporate announcements to manipulate and influence the price of the scrip. The directors along with the company caused to make irregular preferential allotments in violation

of DIP Guidelines to related entities at a favourable price to the disadvantage of genuine shareholders of the company.

3. In view of the above, SEBI issued Show Cause Notices (SCNs) dated December 23, 2010 to Ritesh Properties and its directors namely, Mr. Sanjeev Arora, Mr. Pran Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv Arora, Mr. Surinder K. Sood, Mr. Ashish Aggarwal and Mr. V. P. Chhabra (hereinafter collectively referred to as "the noticees) calling upon them as to why suitable directions, including debarring them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period of time, under section 11(4) and 11B of the SEBI Act, 1992 should not be passed against them. The alleged violation of the SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "the PFUTP Regulations") against the noticees as per the respective SCN are as following:

Name of the noticee	Violations of Act/ regulations
Ritesh Properties (noticee-1)	Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of the PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act.
Shri Sanjeev Arora, Managing Director (noticee-2)	Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(b) , 4(2)(d) and 4(2)(e) of the PFUTP Regulations.
Shri Pran Arora, Chairman (noticee-3),	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.
Shri Roop Kishore Fatehpuria, Director (noticee-4)	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.
Shri Rajiv Arora, Director (noticee-5)	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.
Shri Surinder K. Sood, Director (noticee-6)	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.
Shri Ashish Aggarwal, Director (noticee - 7)	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.
Shri V.P. Chhabra, Director (noticee-8)	Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(e) of the PFUTP Regulations.

4. Subsequently it was observed that the real estate projects announced and sold by Ritesh Properties, in connection with the joint venture development agreement with Ansal for the development of 40 acres of land, had actually not been constructed. Ritesh Properties recognized huge revenues from the said fictitious real estate sales and the same was published in its quarterly results ending March 31, 2007 till December 31, 2008.

5. Further, after SEBI had started investigation in the matter, Ritesh Properties had announced the restatement of its financial statements at BSE on November 25, 2009, writing back all real estate sales and profits of the last two and half years. In view of above, SEBI appointed M/s. S. K. Mittal & Co., (Chartered Accountants) to conduct special examination of the books of accounts of Ritesh Properties and other relevant records for the ten quarters from September 2006 to December 2008; for the examination of the revenue figures reported by Ritesh Properties from the real estate sales; and to determine its impact on the financial statements. All the noticees except noticee no. 8 were acting as directors of Ritesh Properties during the above said period (quarter ending March 31, 2007 till December 31, 2008).
6. Special Examination of books of accounts revealed that:
 - i. Misleading Financial Statement in connection with sale of a flat in Mumbai: For the quarter ended December 31, 2006, the net sales/income from operations of Ritesh Properties were reported at ₹ 160.39 lacs and for the last 9 months ended on that date, the net sales/income was reported as ₹219.73 lacs, whereas sales were actually only ₹69.26 lacs for the nine months that ended on December 31, 2006. Hence, there was a huge difference of ₹150.47 lacs in the revenue reported and in the books of accounts of the company. Ritesh Properties had informed SEBI appointed auditors that during quarter ended December 2006, it had an income of ₹150 lacs from cancellation of property contract i.e. on cancellation, builder agreed to refund the booking amount of ₹10,000/- and further agreed to pay a sum of ₹150 lacs in consideration of cancellation. However, it was observed that even though, the cancellation deed was made on March 28, 2007 and all the payments as mentioned therein were received subsequently, the income of ₹150 lacs was considered as 'Net Sales / Income from Operations' in the quarter ending December 31, 2006 itself, i.e. before the execution of cancellation deed and receipt of consideration for cancellation. Further, the said income of ₹150 lacs was entered in the books of accounts on March 31, 2007 and was shown as real estate revenue as on March 31, 2007 and included in Sales & Services (Income from Operations), which, should be included in "Other Income" and not in "Net Sales/Income from Operations". Therefore, it was observed that Ritesh Properties had falsely inflated the revenues and included the income from the sale of flat in the quarter ending on December 31, 2006 as net sales/income from operations, instead of reporting the same under other income for the quarter ending on March 31, 2007.
 - ii. False and Misleading Financial Statements in connection with the Development and Sale of 40 acres of Land with Ansal :
 - a) In the quarterly financial results from quarters ending March 31, 2007 till the quarter ending December 31, 2008, Ritesh Properties had recognized and published the real estate income booked in connection with the development of 40 acres of land

owned by Ritesh Properties and four other related entities, which was made available for development of Real Estate Business. However, the collaboration agreement, for the development of the entire 40 acres of land, entered with the developer, Ansal on July 14, 2006, had been executed solely by Ritesh Properties without disclosing interest of other four owners. However, agreement/MOU/arrangement for, pooling of the land for development, sharing of revenues, income, expenses etc. between the said four entities, and Ritesh Properties, were not available with Ritesh Properties.

- b) Further, as per clauses 11 and 12 of the collaboration agreement ‘Revenue Sharing’ provided for sharing of the revenue between Ritesh Properties (the owner) and Ansal (the developer) at 22.5% and 77.5%, respectively and the developer shall be exclusively entitled to sell entire built up area including the share of the owner at a mutually decided pricing in writing. In contravention to the terms of the said collaboration agreement, Ritesh Properties entered into an agreement to sell 1,73,900 sq.ft of land for township/housing on March 19, 2007, with Estate Investments Solution for a total sale consideration of ₹ 4000 lacs. It was observed that Ritesh Properties had recognized and published the revenue of ₹900.00 lakhs from real estate being 22.5 % of the sale consideration of ₹4000.00 lacs, as provided in clauses 11 and 12 under the head “Revenue Sharing” in the quarter ending March 31, 2007. However, the entire share of revenue was reflected in the published financial statements of the quarters ending March 31, 2007 of Ritesh Properties without any amount being apportioned to the other four owners. It was also observed that in subsequent periods ending 2007-08 and 2008-09 the entire sale consideration was recognized as revenue.
- c) It was observed that during the period, subsequent to March 31, 2007, Ritesh Properties deviated from the methodology of recognition of revenue from real estate that was followed in 2006-07 to that extent that the Ritesh Properties overstated its revenue and expense in 2007-08 and 2008-09 (from the quarter ending June 30, 2007 upto the quarter ending of December 31, 2008), by recognizing the entire sale consideration as revenue i.e. ₹ 8,534.00 lakhs in 2007- 08 and ₹ 3699 lakhs in 2008-09 (up to December 31, 2008), and 77.5% of the sale consideration, i.e share of Ansal (Developers) as per the agreement, has been charged as expenses under “Material Consumed”. Apart from irregularities in apportioning the income appropriately, it was observed that no sale consideration was received from any of the parties with whom agreements to sell were entered into. The revenues were recognized before actual receipt of the sale proceeds. Inflated revenues were recognized by considering whole of the sale proceeds, without appropriate apportioning. From the above, it was observed that the company has falsely overstated the turnover and the expenses amount in its financial results.

- d) Although revenue from real estate was recognized from the quarter ending on December 31, 2006, “The Land” continued to appear as Fixed Assets and not as Stock in Trade till as late as the quarter ending on March 31, 2008. From the above, it was observed that Ritesh Properties had overstated the Fixed Assets and presented wrong Balance sheets.
- iii. Further, following discrepancies were noted in the said agreements for sale entered into by the company-
 - a) The entire sale-agreements were executed by Ritesh Properties even though, as per clause 12 of the collaboration agreement, the exclusive rights to sell were with Ansal.
 - b) All the agreements for sale of the said plot, entered into by Ritesh Properties were in plain papers and witnessed by a single witness and the witness was common in all agreements.
 - c) As per the agreement, the sale consideration was payable by the buyer in instalments under development / construction link programme. However, the instalment programme was not attached to any of the Agreements to Sell. Moreover, there were no records to show that Ritesh Properties had actually received any token money/advance from the buyers.
 - d) No sale consideration was received by Ritesh Properties from any of the parties with whom agreements to sell were entered into.
 - e) All the said agreements for sale were cancelled by virtue of Agreements of Termination, all executed on March 03, 2009.
 - f) All the agreements of termination were entered at Ludhiana while addresses of all the parties to the agreements were from Delhi and the witness was also from Delhi.
 - g) None of the agreements for sale or for cancellation were registered with the sub-Registrar of Assurances or any other authority, or notarized.
- iv. Ritesh Properties entered into the agreements to sell with various entities/buyers, and even recognized revenues from the real estate sales, without actually getting the final approval for the development of the said land from the Punjab Government. The agreement with the Punjab Government was executed only on September 10, 2009 whereas the agreements to sell were entered during the period 2007-2008 itself.
- v. On the basis of the above it was observed that there was no transfer of significant risks and rewards of ownership to the purchasers and the agreements to sell were still terminable and had been terminated and there was absolute uncertainty of receiving the sale consideration, and there was no sale at all, which could be recognised as revenue. Despite all these, the company had overstated its revenue and profits without following the applicable Accounting Standards for recognizing revenue from real

estate i.e. recognized the real estate revenue, which was not in existence at the time of recognition and published in its financial quarterly results, thereby giving a false notion of Ritesh Properties's turnover, revenue and profits to the investing public.

vi. False and Misleading Financial Statements in respect of Sale/turnover from Sale and Export of Garments :

- a) As regards, the sale/turnover from the sale/export of garments, it was observed that Ritesh Properties exported garments to M/s Catalina Bay Inc., USA (hereinafter referred to as "Catalina Bay"), and made domestic sales to Femella Fashions Private Limited. Both the said companies were subsidiaries of Ritesh Properties.
- b) It was observed that no payments were received by Ritesh Properties from the above companies for the sale/exports of garments; instead, it was found that amounts were received by Ritesh Properties as loans and advances from these companies and Ritesh Properties had made investments in these companies. The copies of agreement/arrangement detailing terms & conditions with Catalina Bay, was not available with Ritesh Properties. Therefore, it was observed that Ritesh Properties has recognized the revenue from fictitious sale of garments.
- c) Further, sale/turnover also includes sale of shares and Ritesh Properties had included the sale of shares as part of operating income instead of 'other income'. The examination by the auditors revealed that even though the sale of shares were included as incidental or ancillary object in MOA, no resolution was passed by general meeting on this object.

vii. Differences and Discrepancies in the revenue reported in Published Quarterly Results and in the books of accounts of Ritesh Properties:

- a) It was noticed that there were huge differences in the revenue reported in Published Quarterly Results and in the books of accounts of the Ritesh Properties and also other improprieties in accounting. The extract depicting the differences in the revenue reported in each published quarter (from quarter ended December 31, 2006 till December 31, 2008) and the actual are as below:

Sl No.	Quarter ending	Revenue		Profit/(Loss)		EPS (Basic) before Extra-ordinary item.	
		₹ in lacs)		₹ in lacs)		₹)	
		As Reported by Ritesh Properties	Actuals (as calculated by S K Mittal & Co.)	As Reported by Ritesh Properties	Actuals (as calculated by S K Mittal & Co.)	As Reported by Ritesh Properties	Actuals (as calculated by S K Mittal & Co.)

1	30/09/06	19.52	19.52	(50.76)	(50.76)	Not Reported	(0.75)
2	31/12/06	161.05	11.05	81.49	(59.46)	1.21	(0.79)
3	31/03/07	937.23	187.23	733.56	55.03	10.87	0.82
4	30/06/07	2019.89	69.89	370.66	(68.09)	4.02	(0.74)
5	30/09/07	1904.31	4.31	343.66	(83.84)	3.73	(0.91)
6	31/12/07	2803.99	103.99	475.32	(75.63)	5.13	(0.82)
7	31/03/08	2025.83	51.83	75.48	(186.54)	0.77	(1.90)
8	30/06/08	3327.23	30.23	418.73	(101.51)	3.61	(0.88)
9	30/09/08	18.61	18.61	(63.47)	(63.47)	(0.55)	(0.55)
10	31/12/08	424.68	22.68	3.37	(84.47)	0.29	(7.27)

- b) On the basis of the said extract regarding the inconsistencies between the figures and other discrepancies mentioned in the published financial quarters and books accounts examined by the auditors, S K Mittal & Co, it was observed that Ritesh Properties had falsely projected profits, which were inflated and not genuine so as to mislead the investors.
- c) It was also observed that Ritesh Properties has not prepared and published the quarterly financial results of the affected quarters (i.e quarter ending December 31, 2006, March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008), after the revision/restatement of financial statements.
7. It was observed that inflated financial results pertaining to six quarters i.e., from September 2006 to December 2007 were disseminated during the investigation period. These inflated financial results in addition to the misleading corporate announcements made by the company contributed to the artificial price rise in the scrip. In view of the aforesaid, it was alleged that the noticees had violated the provisions of section 12(A) (a) (b) (c) of SEBI Act, 1992 read with regulations 3 (b), 3(c), 3(d) and 4 (1), 4(2)(e), 4 (2) (k) & (r) of PFUTP Regulations. Accordingly, a common Supplementary Show Cause Notice (hereinafter referred as "SSCN") dated November 19, 2012 was issued to the noticees asking them to show cause as to why suitable directions, including debarring them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period of time, under sections 11B of the SEBI Act, 1992 should not be issued against them for violations specified/alleged therein which may.
8. Vide letters dated January 11, 2011, Mr. Sandeep Parekh, Advocate on behalf of Ritesh Properties, Mr. Sanjeev Arora, Mr. Pran Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv

Arora, Mr. Surinder Sood and Mr. Ashish Aggarwal submitted reply to the SCNs issued to them. Mr. V. P. Chhabra vide his letter dated January 11, 2011 requested for copy of order vide which investigation was ordered and Investigation Office was appointed, and a copy of investigation report.

9. Further, vide letters dated January 25, 2013 Ritesh Properties, Mr. Sanjeev Arora and Mr. Roop Kishore Fatehpuria submitted their reply to the SSCN. Vide letters dated December 13, 2012 Mr. Rajiv Arora, Mr. Surinder Sood and Mr. Ashish Aggarwal submitted their reply to the SSCN. Vide letter dated March 30, 2013 Mr. V. P. Chhabra submitted his reply to the SSCN issued to him.
10. Opportunity of personal hearing was also granted to Ritesh Properties, Mr. Sanjeev Arora, Mr. Pran Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv Arora, Mr. Surinder Sood, and Mr. Ashish Aggarwal on June 19, 2013, August 13, 2013, November 12 & 13, 2013 and November 20, 2013. Wherein Shri N. P. S. Chawla, advocate, Shri I. S. Ratta, advocate and Shri K.V. Jindal, advocate appeared and made submissions on behalf of them. Subsequently, vide letter dated December 05, 2013 they filed their written submissions in the matter.
11. An opportunity of personal hearing was granted to Mr. V. P. Chhabra on June 19, 2013 to which he requested for adjournment. As per his request another personal hearing was granted to him on July 25, 2013. However, he once again did not attend the scheduled personal hearing. Subsequently, vide his letter July 22, 2013 Mr. V. P. Chhabra submitted his submissions along with and requested to consider the same.
12. Final opportunity of personal hearing was granted to Ritesh Properties, Mr. Sanjeev Arora, Mr. Pran Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv Arora, Mr. Surinder Sood, Mr. Ashish Aggarwal and Mr. V. P. Chhabra on September 23, 2015 when Mr. N. P. S. Chawla, Advocate, appeared on behalf of Ritesh Properties, Mr. Sanjeev Arora, Mr. Roop Kishore Fatehpuria, Mr. Rajiv Arora, Mr. Surinder K Sood and Mr. Ashish Aggarwal, and reiterated the submissions on record. Ld. Advocate also placed additional documents on record.
13. Ritesh Properties, Mr. Sanjeev Arora, Mr. Pran Arora and Mr. Roop Kishore Fatehpuria have submitted their replies to the SCN on the similar line, their preliminary submissions are summarised as follows:
 - i. Though it is legally permissible, but it has been a standard internal, though formal practice consistently followed by SEBI in the past to either initiate adjudication proceedings or section 11 proceedings under the SEBI Act and not take parallel/simultaneous actions i.e. adjudication as well as section 11 proceedings with reference to the same subject matter. In the past, whole time members of SEBI have been taken this stand. For instance in the matter of *M/s SSKI Corporate Finance Pvt. Ltd.*, *M/s Enam Financial Consultants Pvt. Ltd.*, *M/s SBI Capital Markets Ltd.* and *M/s JM Morgan Stanley Pvt. Ltd.* SEBI has found that

Though, there is no bar under the scheme of the statute for initiating parallel proceedings for the same sent of violations, in the facts and circumstances of this case, without expressing any opinion of the seriousness of the violations alleged, I am of the view that no useful purpose would be served by continuing two parallel proceedings and interest of justice would be met by conducting only the Adjudication Proceedings."

- ii. Further, adjudication proceedings concerning similar facts and allegations, as in the present case have already got concluded against the company and its Managing Director vide SEBI Adjudicating Officer orders dated November 30, 2010 and August 31, 2012, respectively.
 - iii. Almost all the allegations raised by SEBI are arising out of same transactions, however, as a sheer abuse of process of law, various allegations have been raised by SEBI in piecemeal manner, i.e., by initially raising few allegations in one set of proceedings and thereafter, raising more allegations, arising out of the same transactions, in different set of proceedings. SEBI has initiated the present proceedings in absolute contradiction to the established principle of law and practice. Further, the present proceedings are even hit by the principles of *Res-Judicata*.
 - iv. Mr. Pran Arora had died on October 09, 2011. Further, Mr. Surinder Sood, Mr. Ashish Aggarwal and Mr. V. P. Chhabra are independent directors, who were not involved in any day to day affairs of the company and hence no allegations can be leveled against them as has been done in the SCN and SSCN.
14. Ritesh Properties, Mr. Sanjeev Arora, Mr. Rajeev Arora and Mr. Roop Kishore Fatehpuria has submitted their reply to the SCN on merit of the case on similar line, which can be summarised as below:
- i. Pursuant to the decision of the Board of Directors of Ritesh Properties on August 12, 2006, all the relevant information, as available at that point of time, was disclosed in corporate announcement dated August 16, 2006, pertaining to the decision of the Board to approve the Collaboration Agreement with Ansal. Since, it was the first venture of Ritesh Properties into real estate business; the company was being guided / led by Ansal, the developer of the project. Since the net worth of the project and profits were dependent on various factors and the information in respect of the projected net worth and profits was being exchanged between Ritesh Properties and Ansal and the estimates of net worth of the project and the profits could be worked only after various meetings with Ansal by the month of December / January, 2007. Accordingly, the said information was disclosed without any delay, on January 08, 2007. Ritesh Properties had no intention to conceal the projected net worth and profits at the time of making corporate announcement in August, 2006 and all the relevant information available at

that time was disclosed in August, 2006. Even the SEBI (DIP) Regulations prohibited projections in advertisements / public offers because they tend to be highly subjective-

“9.1.14A (c) Such public communication or publicity material shall contain only factual information and shall not contain projections, estimates, conjectures, etc.”

In view of the above stated regulation, the company under restricted to communicate the information about the projected network and profits till the time the same is calculated on the basis of justifiable calculations.

- ii. The requisite approval was granted by the Govt. of Punjab vide its letter dated April 12, 2006 in relation to the development of the project. It was submitted that the said approval letter, *inter-alia*, stipulated the following:

“...d) Permission under Punjab State Tubewell Act, 1954 to dig Tubewell in project area for requirement of the project was allowed.

e) Permission under the provisions of Punjab Mines & Mineral Act shall be allowed within the project area for works relating to development of the project. However, due charges will be payable.

...

j) the project of industrial park shall be exempted from PAPR Act.

...

l) State Government shall allow the company to connect the project area to the State Transport Network. The State Government shall also allow them to operate their own public transport system within the project area and also for connecting the project area to the main urban centre nearest to the project area subject to the fulfillment of required terms and conditions in this regard.

...

o) No State Agency shall erect any barrier or create hinderance in various connectivities which shall be allowed to the project except on the ground of major law and order problem or National Security considerations. ...”

- iii. As regards the NOC / approval of Punjab Pollution Control Board, it was submitted that the above-stated approval letter dated 12th April, 2006 issued by the Punjab Government also stipulated in the following terms: *“the Pollution Control Board shall grant NOC and consent to operate to the Green Category Industry to be located in the Industrial Park in 30 days on fulfillment of all the required terms and conditions”*. The application for obtaining such approval of Punjab Pollution Control Board was filed by Ritesh Properties in March, 2007, however, the department took long time to grant NOC despite the specific stipulation already given by Govt. of Punjab in its approval letter dated 12th April, 2006. Further, the Government of Punjab had changed in the mid of year 2007 and the concerned department took more than usual time to consider the application of Ritesh Properties. It is relevant to point out that the said NOC was only an incidental approval, which could

be obtained during the course of construction / development of the project. It was submitted that, in view of the said approval, Ritesh Properties entered into the Collaboration Agreement with Ansal and only, thereafter, made the Corporate Announcement in respect of the Project. Hence, neither any false information nor any misrepresentation was made by Ritesh Properties. In view of the above, it is humbly submitted that the corporate announcement made by the company was neither misleading nor false.

- iv. Ritesh Properties received the letter of withdrawal of subscription of the proposed preferential equity allotment on April 1, 2008 and thereafter Ritesh Properties contacted NDTV to reconsider its decision. However, when NDTV confirmed its decision to withdraw from the proposed preferential allotment, the Ritesh Properties instructed its staff to send the information to the BSE on April 5, 2008, however, the staff inadvertently failed to courier the same. During the investigation, Ritesh Properties came to know for the first time that the intimation to BSE about NDTV's withdrawal from preferential allotment had not been sent. It was submitted that the said non-compliance had been completely inadvertent and not with intention to hold back and to conceal any information from the public and authorities.
- v. Although Ritesh Properties is not required by law to intimate about the public announcements in relation to its Wholly Owned Subsidiary (WOS), however, Ritesh Properties, as a measure of good corporate governance intimated BSE about the fact that its WOS had inaugurated a showroom in Pitampura, Delhi and that the said WOS had made an announcement that it had plans to open more such retail outlets, however to suggest that said information led to increase in the prices of the shares of Ritesh Properties may not be correct and cannot be construed as a mechanism to deliberately manipulate the prices of the shares of Ritesh Properties.
- vi. The above referred announcements were made on the basis of certain projections. The business model of the WOS was similar to various other retail companies which have presence across India. In fact WOS was able to open 7 stores in a very short span of time. After May, 2008, the WOS suffered major setback as the retail sector saw the worst recession in several decades due to the unprecedented financial crunch across the world. It is natural for the company facing difficulties to turn conservative in approach and adopt mechanisms to avoid cost and expenses. Since business is about success and failure, neither of which is guaranteed, management of Ritesh Properties cannot be blamed for having optimistic projections that they sincerely believe in, even though such projections could not be materialized and they appear aggressive in hindsight. It is reiterated that Ritesh Properties and its directors had made sincere attempts for the growth and diversification of Ritesh Properties and its WOS. There was no fraudulent intention for publication of the said announcement as it was a projection of the business

expansion. There was no intention to defraud the investors or manipulate the pricing of the scrip.

- vii. The allotment of shares made at ₹ 20/- per share to the company was made after passing the resolution under section 81(IA) of the Companies Act, 1956. Further, the price of ₹20/- per share was arrived at after computing and determining the price in accordance with clause 13.3.1 of Chapter XIII and other applicable provisions of the DIP Guidelines. Pertinently, it may be noted that the said issue of shares was made in terms of the directions of BSE communicated to the company through the letters, written to the company by BSE. Vide board resolution dated November 25, 2006, the Board of Directors of Ritesh Properties approved the allotment of 25 lacs equity shares of ₹ 10/- each at a premium of ₹ 10/- each amounting to ₹ 500 lacs on preferential allotment subject to approval of shareholders in EGM to be held on December 23, 2006. The said valuation was certified by the Chartered Accountant to be in accordance with the DIP Guidelines. It is humbly submitted that the definition of the “Relevant Date” under the DIP Guidelines provides that the said Relevant Date shall be construed as 30 days prior to passing of a resolution under section 81(1A) of the Companies Act. In the instant case, the relevant resolution was one passed in the EGM held on December 23, 2006 wherein the decision for further issue of shares under section 81(1A) of the Companies Act, 1956 was passed and not the later resolution passed by the shareholders in their meeting held on February 28, 2007 only for ratification and adopting the pre and post shareholding pattern of the company. In view of the above, the “relevant date” remained unchanged for the purpose of calculation of the price of the scrip as stipulated under the DIP Guidelines. In view of the above, it is clear that the issuance of shares was made in full compliance of applicable provisions of the SEBI Guidelines and the BSE letters.
- viii. With regard to allegations that Shree Atam was related to Ritesh Properties through a common person named Mr. Roop Kishore Fatehpuria, who was compliance officer and one of the directors of Ritesh Properties, it was submitted that there is no definition of “related companies” in the Companies Act, 1956, SEBI Act or any other incidental regulations and guidelines issued thereunder. It was submitted that the allegation with respect to the said company being related to Ritesh Properties on the ground, as alleged by SEBI, is misconceived, vague and untenable in law. It is further submitted that even the DIP Guidelines do not envisage definition of “related companies” as being sought to be alleged by this Hon’ble Board. For the purposes of allotment on preferential basis, the DIP Guidelines identifies two categories of allottees i.e., non-promoters and promoter. However, in the instant case, SEBI has set out a case of allotments being done to “related companies”. Such allegation is a non-issue in so far as the same pertains to compliance of DIP Guidelines. It is pertinent to draw your kind attention to the fact that the said accounts were opened in May, 2007, that is much after the preferential allotment to Vishal Concast (now Auster Securities) by Ritesh Properties. Further, since Mr.

Fatehpuria was neither a shareholder nor a director of Vishal Concast (now Auster Securities), he was not privy to the business transacted by the company and he rendered assistance in opening the DEMAT account. He was authorized merely as a compliance officer by Vishal Concast.

- ix. With regard to the allegation that Vishal Concast (now Auster Securities) was related to Ritesh Properties as Mr. Sanjeev Arora, promoter of Ritesh Properties, held shares in Ritesh Impex Pvt. Ltd. and Ritesh Impex Pvt. Ltd. in turn held shares in Vishal Concast it was submitted that the DIP Guidelines do not envisage definition of “related companies” as being sought to be alleged by this Hon’ble Board. In so far as Ritesh Impex Private Limited (“Ritesh Impex”) is concerned, although the said company was incorporated on April 27, 1994 and Mr. Sanjeev Arora was a subscriber to the memorandum of association, however, till the time he and his brother were holding 10 shares each, the said company had not commenced business. Thereafter, the said company was taken over by Mahindru group, who were issued fresh shares in Ritesh Impex. The SCN failed to provide even a single instance to demonstrate that Vishal Concast (now Auster Securities) had acted in collusion or in connection with shares to cause any wrongful loss to any investor.
- x. The said issue of shares was made in terms of the directions of BSE communicated to the company through the letters, detailed hereinafter, written to the company by BSE. Ritesh Properties vide its letter dated September 15, 2007 and subsequent reminder dated October 30, 2007, sought ‘in-principle’ approval from BSE for the proposed issue. On November 12, 2007, BSE granted ‘in-principle approval’ for the proposed issue on preferential basis and advised Ritesh Properties to ensure compliance with applicable regulations/ Guidelines. Ritesh Properties could not have issued the share warrants without receiving the in-principle approval from BSE. Further, the allotments were done without any further delay by the Board of Directors vide board resolution dated November 26, 2007 after receipt of the in principle approval. It may be noted that some of the allottees were not issued equity shares due to their non-fulfillment of the conditions for conversion of the share warrants into equity shares and their monies were forfeited by Ritesh Properties. It was submitted that this Hon’ble Board has failed to establish that the said allotment affected the investors, particularly, in view of the fact that the allotment was approved by the shareholders and the entire process was under scrutiny of BSE and subsequently approved for trading and listing.
- xi. Shivalik is related to Ritesh Properties as Ritesh Properties held 4,10,000 shares in Shivalik Securities Limited at the time of allotment it was submitted that there is no definition of related companies in the Companies Act, 1956, SEBI Act, 1992 or any other incidental regulations and guidelines issued thereunder. It is further submitted that Shivalik Securities Limited is neither forming part of the promoter group nor it is otherwise related or connected with Ritesh Properties. The true and correct facts are that,

Shivalik Securities Limited had in the year 2001 allotted 4,10,000 shares to Ritesh Properties in its capacity as independent investors. The said investment was made by Ritesh Properties as strategic investment. Merely because Ritesh Properties made investments in Shivalik Securities Limited, would not make Shivalik Securities Limited, part of the promoter group of the Ritesh Properties. Further, Shivalik Securities Limited is a separate legal entity and has no relation with any of the promoters or directors of the Ritesh Properties. When the preferential allotment of aforesaid warrants was made by Ritesh Properties to Shivalik Securities Limited, it was informed that Ritesh Properties was not a shareholder of Shivalik Securities Limited. It is also evident from the fact that the “investment segment” of the balance sheets of Ritesh Properties does not reflect that Ritesh Properties holds any shares of Shivalik Securities Limited. Also the investment side in the Balance Sheet of Ritesh Properties for the year 2000-2001 and 2002-03 confirms that the investment of Ritesh Properties in Shivalik Securities Ltd. was liquidated at that point of time.

xii. Hence, the entire process of allotment was completed in accordance with the applicable DIP Guidelines and was done under the blessings of BSE and subsequently, in-principle and final approvals were also given on due compliance of the terms and conditions applicable on non-promoter quota. It was submitted that despite the regulator (BSE) having diligently supervised the entire transaction, it is unjustified and unwarranted on the part of SEBI to raise these kind of allegations.

15. Ritesh Properties and Industries Ltd., Mr. Sanjeev Arora and Mr. Roop Kishore Fatehpuria has submitted their reply to the SSCN on similar line, which can be summarised as below:

- i. Replying to the allegation of misleading financial statement in connection with sale of a flat in Mumbai the submitted that the commercial unit was booked in 2005 by Ritesh Industries Limited for the purposes of office space. The company had paid the advance amount and a Memorandum of Understanding (“MoU”) dated 10th March, 2005 was entered into between Ritesh Properties and Suyojit Infrastructure Limited. Subsequently, the possession of the said office space was not given to Ritesh Properties by the builder and as a reason of breach/ non fulfillment of terms of the MoU, the builder agreed to pay a compensation of ₹ 1.5 crores to Ritesh Properties. Ritesh Properties, upon agreeing to the terms of the cancellation of the MoU, recognized the income on the accrual basis of accounting. Subsequently, the parties reduced the agreed terms in writing by executing the Cancellation Agreement dated March 28, 2007. The recognition of the receipt of the compensation, as was done by Ritesh Properties, was correct and in accordance with the statutory provisions of the Companies Act, 1956, provisions of Listing Agreement, and also is in line with the generally accepted accounting principles and norms.
- ii. Oral agreements are valid agreements and the parties had acted upon the oral agreement. It is a well-settled principle that an oral contract by which itself the parties intend to be

bound is valid and enforceable. It is further submitted that the parties at a later stage decided to execute a formal deed of cancellation with the intent to record the understanding between the said parties. It is also relevant to note that the amount of ₹ 1.5 crores was subsequently received from the builder. The amount received by the company is primarily on account of company's real estate business which is one of the main objects of the company and not on account of any other ancillary/miscellaneous businesses of the company. Further, it may be noted that the net profits of the company remained same irrespective of the fact whether receipt of the compensation. Therefore, the company rightfully categorized the receipt of said amount of damages as its 'business income'.

- iii. The land admeasuring 40 acres was allotted by the Govt. to Ritesh Industries in 1994. The money was paid to the Govt. by Ritesh Industries Limited. Since the amount was paid by Ritesh Industries, the amounts remained payable and outstanding as Loans in the books of accounts of Ritesh Industries against the said entities. The allotment letter dated April 22, 1994 for the entire 40 acre land was issued in the name of Ritesh Industries Limited. Subsequently, for carrying on the different projects, the said land was segregated into 4 separate companies. The four land owning entities entered into a Collaboration Agreement dated May 31, 2006, wherein Ritesh Industries was made a Lead Party for effectuating joint and collective development of their land as a Mega Project either itself or in association with a developer. It was stipulated under the said Agreement that the said entities (second to fourth party) shall not contribute any fund for the development of the proposed project and all the expenses of whatsoever nature will be incurred by "first party". The "second to fourth parties" has also agreed to give irrevocable power to Ritesh Industries to sell their respective shares of the developed area and to keep the sale with it. As per the Collaboration Agreement dated May 11, 2006, the said entities had agreed that Ritesh Properties shall keep the sale price with it. Further, the profit would have been shared amongst the said entities on completion of the project and thus, the sale price was not to be distributed amongst the 4 entities. Hence, no portion of the income accrued from sales was intended to be shared with the said entities before the completion of the project. Accordingly, the entire amount of the receipt on accrual basis was recognized in the books of the company.
- iv. The methodology of recognition of revenue was not changed to the extent that even in 2007-08 and 2008-09, the income from sales was recognized on accrual basis, which is a recognized accounting principle, as also stipulated under section 209 of the Companies Act, 1956. As regards, the recognition of 100% sales, it was submitted that the Collaboration Agreement July 14, 2006 with Ansal, only envisages sharing of revenue viz. 77.5% by Ansal and 22.5% by Ritesh Properties and does not contemplate the manner in which the monies can be booked/ received. Since, the agreements to sell with the buyers were executed by the Ritesh Properties (being the land owner), Ansal was not a

recognized party under the said agreements with the buyers and therefore, the income from sales could not have been apportioned to Ansal before the same is recognized by Ritesh Properties in its books. It is further submitted that Ritesh Properties had reflected net revenue as income for the financial year 2006-07. However in subsequent periods, based on expert opinion, the method of presentation was amended to reflect the gross revenue on one side and share attributable to developer as expenses corresponding to that revenue. The Company was opined that Ritesh Properties possesses the right to obtain the sale consideration from buyers and is responsible for fulfilling all the obligations under the aforesaid agreement. In view of the same, it was apt to recognize the entire amount of sale consideration in the books of accounts of Ritesh Properties. Further, since it was the liability of the company to give the share of Ansal in the sale consideration, the company was advised to separately recognize the share of amount payable to Ansal in the profit and loss account, in order to fully and properly reflect the complete effect of the Agreement to Sell executed between the company and the buyers, which would give a true and fair view of the financial statements of the company. It is also pertinent to note that in either of the ways of recognizing either the full amount in the books of accounts of the company (as being done in the instant case) or recognizing only the net amount, the net profit or loss would have remained the same and therefore there was no over or under reporting of profits in any of the cases solely on account of change in the method of accounting policies.

- v. With regard to the allegations that land has been recognized as “fixed asset” and not as “stock-in-trade” till quarter ending March 31, 2008, it was submitted that the land was purchased by the company in year 1994 and it had to be reflected as Fixed Asset till October, 2006 i.e. till the time, Ritesh Properties amended its main objects to include real estate as one of the main objects. Even subsequent to the inclusion of real estate as main object of Ritesh Properties, there were divergent accounting practices in the real estate industry with respect to accounting treatment of land in the books of accounts as certain professionals opined that the land needs to be reflected as stock-in-trade whereas certain others hold a view that land must be reflected as a fixed asset. Due to the divergent views and absence of clarity, the Ritesh Properties decided to adopt one of the possible views and treat the land as fixed asset for the year 2006-07. It is wrong to allege that the land was not recognized as stock-in-trade till the quarter ending March 31, 2008. It was submitted that land was transferred as “stock-in-trade” in the FY 2007-08. Even otherwise, the materiality of the effect of sale of the land (fixed asset) vis-à-vis the book value of the portion of land sold and from where the revenue was recognized is only 1.12%. It is clear that the same even becomes a non issue because of the inconsequential and miniscule ratio involved. Notwithstanding the above, it is pertinent to state that whether an asset is categorized as stock or fixed asset will not have any bearing on the total assets of the company.

- vi. With regard to the allegation that Ritesh Properties entered into agreement to sell with buyer, namely, Estate Investments Solution, in contravention of the Collaboration Agreement, it was submitted that Ritesh Properties had obtained a concurrence from the developer, Ansal, before carrying out sales as the same were in mutual interests of both Ritesh Properties and Ansal. Hence, the terms of the Collaboration Agreement stood amended to this extent i.e. in respect of entering into agreements to sell with buyers. It was submitted that Ansal was fully aware of the agreement to sell by the company and did not raise any objections in this regard.
- vii. As a matter of practice in real estate industry, all the agreements to sell are executed on plain paper and whenever the possession of the property is handed over to the buyer, a proper conveyance deed is executed, applicable stamp duty and registration charges are thereafter paid. Further, it was submitted that there is no law which restricts one person acting as a witness in all the documents. It is pertinent to mention that the person who was assisting the company in the documentation acted as witness in all cases. Accordingly, there is no reason to suspiciously look at the documentation.
- viii. With regard to the allegation that no instalment programme was attached to any of the agreements, it was submitted that since the construction had not started as the final agreement with Punjab Government was yet to be entered into by Ritesh Properties in terms of the then prevalent policy, Ritesh Properties could not have accepted sale consideration or any advances from public. Hence, no installment programme was attached along with the agreement to sell. The buyers were well aware of the said fact and nothing had been concealed from them. It is further submitted that this is purely a contractual issue and the same is beyond the powers of SEBI to enquire into.
- ix. With regard to allegations that no actual sale consideration received from the buyers, it was submitted that as per the guidelines for Mega Projects by the Punjab State Government, the payments could not have been collected till such time the company signs the final agreement with Punjab State Government. However, there was no bar in execution of the agreements to sell. Hence the agreements were executed and the units were booked, however, no sale consideration was taken by Ritesh Properties. The said final agreement was entered into with Punjab Government on September 10, 2009.
- x. With regard to the allegation that all termination agreements were executed on March 03, 2009, it was submitted that the parties with whom the agreements to sell were executed pressurized the company to cancel the agreements to sell as the proposed project was delayed beyond reasonable time and have become redundant/non-operational. Ritesh Properties decided to call the buyers for a meeting at Ludhiana to inspect the site and take a final view and thereafter, the termination agreements were executed. Further, there is no restriction on execution of the agreements on the same date and all the

agreements entered on the same date is only a matter of coincidence and cannot be viewed as a dubious act on the part of the company.

- xi. With regard to the allegation that all termination agreements executed at Ludhiana, however, all parties belong to Delhi, it was submitted that it is a matter of fact that the buyers were based in Delhi. However, due to persistent enquiries and worries of the buyers, Ritesh Properties decided to call the buyers for meeting at Ludhiana to inspect the site and take a final view and thereafter, the termination agreements were executed at Ludhiana. There is no infirmity or illegality in the same and it is beyond the powers of SEBI to enquire into.
- xii. With regard to allegations that none of the agreements were registered or notarized, it was submitted that the execution of any agreement on a plain paper or without adequate stamp or the same being an unregistered document, does not invalidate or render an agreement unenforceable in law. Further, such defects are curable under the law. In any event, this is purely a contractual issue and the same is beyond the powers of SEBI to enquire into.
- xiii. Ritesh Properties had received in-principle approval by the Govt. of Punjab. It was only thereafter that Ritesh Properties and Ansal initiated the work on the land and had also prepared requisite drawings for the project. The project was declared as “Mega Project” by the Govt. of Punjab and the Empowered Committee had sanctioned the same on March 31, 2007. It is thus submitted that Ritesh Properties was well within its rights to enter into agreements to sell with the buyers as the project had been given “in-principle” approval. With regard to allegations that Ritesh Properties did not follow relevant accounting standards, it was submitted that that Ritesh Properties has always been maintaining its books of accounts in accordance with the applicable accounting standards. There was a transfer of risks and rewards under the agreement to sell as the parties had agreed for transfer of the property under the said agreement. It was submitted that the agreement to sell may have the effect of transferring all significant risks and rewards of ownership to the buyer even though legal title is not transferred or the possession is not given to the buyer. The practice followed in the industry recognizes the rights of the buyers even without formal transfer of possession. Further, the collection of the consideration was to be done as per the instalment schedule as clearly stipulated under the agreement. The said instalments had to commence on grant of approval / construction. Hence, there was no uncertainty as regards collection and it was not unreasonable to expect ultimate collection.
- xiv. There were two different sets of transactions, one pertaining to sales made by Ritesh Properties to these Companies, namely, Femella Fashions and Catalina Bay and the other relating to loans and advances given by Ritesh Properties to these Companies. Separate accounts for sales and loans are maintained by Ritesh Properties in respect to

transactions with Catalina Bay. Clear and fair reporting of these transactions is reflected in the balance sheets of the company. It appears that SEBI has mixed up two different issues. It was submitted that the sales were made but no payment were received against the sales and the same amount was lying in the debtors. Ritesh Properties made actual sales and the invoices of the said sales are in the possession of Ritesh Properties.

- xv. With regard to allegation that income from sale of shares shown as 'operating income', it was submitted that buying and selling of shares is a part of the incidental and ancillary objects in the memorandum of association of the company and hence, selling of shares is an operating activity. Therefore, income from sale of shares was shown under the head 'operating income'. Further, there would not have been any effect on the revenues or net profits of the company had the said amount was shown under 'other income' instead of 'operating income'.
 - xvi. It is a matter of fact that all the agreements to sell were terminated on March 03, 2009 despite of the persuasion by Ritesh Properties for convincing the buyers for extension of time, however, the buyers did not agree. In view the same and with the objective of depicting true and fair view of financial position of company, the Board took a decision to revise the Balance sheets for the previous years, in which the revenue was recognized on accrual basis. Accordingly the balance sheets were revised. It was submitted that this is a standard practice in the real estate industry that in case of termination of agreements, the accounts are revised. The revised balance sheets were approved by the shareholders, published and also communicated to the BSE. However, it may be noted that there was no such stipulation under the Listing Agreement / Companies Act to revise the quarterly results or to publish the same. Despite there being no requirement to publish the revised results, the company had still published the revised yearly results.
 - xvii. Trading of the shares of the company took place on the basis of market forces prevalent in the securities market and company had no control over the same. Further, on perusal of status of BSE Realty index and BSE SENSEX index in the relevant period, it is apparent that the real estate market itself was rising and not just the scrip of Ritesh Properties. Further, the relevant period relates to approximately 2 years and it is not an unexpected rise for the price of scrip to rise in a rising market over the span of 2 year. Therefore, it was submitted that increase in price and volume of scrip of Ritesh Properties cannot be viewed as manipulation by the company.
16. Mr. Surinder Sood and Mr. Ashish Aggarwal made following submission:
- i. They merely acted as an independent director of the company and are not involved in day to day management affairs of the company and are not liable for the specific management directed issues. The issues raised in the SCN/SSCN can be best answered by the company and its management who were involved in the day to day operations and

affairs of the company and/or by the auditors of the company on the matters pertaining to financial information.

- ii. All the allegations stated in the SCN / SSCN are purely management directed issues and they were not being a part of the day to day management of the company, cannot be held liable in these situations.
- iii. The allegations should be set aside and the proceedings in respect of them be dropped in light of the above. Directions under SEBI Act or any action under PFUTP Regulations need not be issued/ taken in respect to them.

17. Submissions made by Shri V.P. Chhabra are as below:

- i. He was appointed as Independent Director on December 31, 2005. Since he did not receive any notice of any Board meeting etc., after waiting for some time, he realised that he was not even being informed about the affairs of the company. Therefore, he resigned on his own on September 12, 2006 which was accepted w.e.f. March 25, 2007.
- ii. He did not have any personal or professional relation or association with the promoters of Ritesh Properties and/or any other director of the company. Neither he nor any of his relatives had purchased or sold any shares of Ritesh Properties or taken any other benefit from the company in the capacity of director or in any other capacity.
- iii. He had not taken any sitting fee of any Board meeting or any Committee meeting and/or any other benefit from the company.
- iv. He had seen for the first time from the Report that he had been shown as member of Share Transfer and Shareholders Grievance Committee and Audit Committee. Neither he was ever asked nor he had given his consent for being appointed as member of these committees.
- v. During the period from December 31, 2005 to March 25, 2007 neither he had attended any Board meeting and/or signed any document, attendance register of any board meetings.
- vi. Under section 5 of the Companies Act, 1956 if any director, other than Managing Director or Whole Time Director, is to be made responsible and liable for any compliances, filing of his consent with the Registrar of Companies is mandatory. In his case neither his consent was taken and filed with Registrar of Companies nor he was informed that he had been appointed Member of any Committee. Further, neither he had attended any meeting of any committee nor he had signed any document, attendance register of any committee meetings.
- vii. In this background in case anything attributable against he or shown or presented to SEBI that is all fabricated document/information without his consent or knowledge and

he denied that - Whatever assumptions or presumptions have been drawn by SEBI based on the documents presented by Ritesh Properties was wrong and was denied.

18. I have carefully considered the SCN and SSCN issued to the noticees, their oral and written submissions. Before dealing with the allegations against the noticees herein, I deem it necessary to refer to relevant provisions of the SEBI Act and PFUTP Regulations charged in the SCN and SSCN. These provisions are reproduced hereunder:-

SEBI Act

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

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;"*

Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:*

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

(b) *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*

(d) *paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;*

(e) *any act or omission amounting to manipulation of the price of a security;*

(f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

(k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors*

(r) *planting false or misleading news which may induce sale or purchase of securities.*

19. Before dealing with submissions of the noticee on merit, I deem it fit to deal with the preliminary objections raised by the noticees. In the instant case, the proceedings under sections 11 and 11B of the SEBI Act have been initiated against Ritesh Properties and its Managing Director, Mr. Sanjeev Arora, in addition to the adjudication proceedings against them as the charges against the said noticees are grave and have larger implications on safety and integrity of the securities market. I note that the present proceedings under section 11(4) and 11B of SEBI Act, 1992, and Adjudication Proceedings are different and independent civil proceedings. It is an established principle that being civil proceedings there is no bar on initiation of proceedings under section 11B and Adjudication Proceedings, out of same cause of action. Further, if allegations are established, in Adjudication Proceedings only monetary penalty can be levied. However, under the present proceedings, if the allegations in respect of the noticees are established, suitable directions can be passed. Both these civil proceedings had different purpose. Further, in my view, if serious contraventions are alleged, monetary penalty alone would not be sufficient to safeguard the market integrity. In this regard, the following observations of the Hon'ble SAT in the order dated December 02, 2010, in the matter of Appeal no. 70 of 2010 – *Yashraj Containers Ltd. vs SEBI* are worth mentioning:

“... we cannot resist observing that in view of the serious allegations made against the appellants which stand established during the course of the adjudication proceedings, the Securities and Exchange Board of India (for short the Board) should not have been content with initiating only adjudication proceedings

against the appellants in which only a monetary penalty could be levied. This is a fit case where the Board should have considered initiating proceedings under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 for issuing appropriate directions against the appellants to protect the integrity of the market and the interests of the investors.....

This is, indeed a very serious market illegality/irregularity and, in our view, imposing a monetary penalty alone on the company and its promoters will not meet the ends of justice. We are constrained to make these observations because the lenient view taken by the Board does not, in our opinion, protect the integrity of the market and not even the interest of the investors which is its primary duty. This kind of a lenient view will not be a deterrent for others and would send a wrong signal that the delinquent could continue with their nefarious activities by paying a monetary penalty.”

20. I find that that the present proceedings are not barred by the principle of *Res Judicata* and submissions of the noticees in this regard cannot be accepted.
21. Further, Ritesh Properties has brought on record that Mr. Pran Arora has died on October 09, 2011 and the company has submitted a copy of his death certificate, as well. I, therefore find that with death of Mr. Pran Arora, the present proceedings in respect of him also abated. The proceedings in respect of Mr. Pran Arora are disposed of, accordingly.
22. Mr. Surinder Sood, Mr. Ashish Aggarwal and Mr. V. P. Chabbra have contended that during the investigation period they were independent directors of the company and were not involved in day to day management of the company. They have submitted that they were not responsible for any of the acts as alleged in the SCN and SSCN. I note that these directors being independent directors are not 'officers in default' in the matter for the purposes of the Companies Act. Further, I note that there is no material on record to suggest that these independent directors were in any way involved in any of the allegations as made in the SCN and SSCN. I, therefore give benefit of doubt to Mr. Surinder Sood, Mr. Ashish Aggarwal and Mr. V. P. Chabbra.
23. Having dealt with the preliminary objections raised by the noticees, I now proceed to deal with the charges levelled against the noticees. It has been alleged that the company had deliberately suppressed the crucial information with respect to its joint venture project in Ludhiana, like projected net worth (₹800 crore) and profit (₹150 crore) in its disclosure at BSE on August 16, 2006. In this regard I find the submissions of the company reasonable that it had projected net worth of the project and projected profits were not readily available at the time of signing of joint collaboration agreement. I find that there is a possibility that as submitted by the noticees, the company got these estimates only after various meets with Ansal by the month of December / January 2007 and the company did not have this information earlier at the time of making corporate announcement on August 16, 2006. In absence of any thing to suggest that the company had information about the projected new worth or profit at the date of disclosure i.e. August 16, 2006, I to give benefit of doubt to the noticees in this regard.

24. Further, it has also been alleged that the company's announcement on January 08, 2007 that *"The Punjab Government has already approved the Project of the company, as a Mega Project and all requisite approvals including approval of drawings and other approvals for the said project have been obtained. The initial work on the site has started. The formal launch of the Project will take place within a month..."* was false and misleading since the crucial permission from Punjab Pollution Control Board was actually received only in February 2009. The company has submitted that it got in principle approval on April 12, 2006 and it has submitted a copy of the approval dated April 12, 2006 issued by the Govt. of Punjab. I note from the said letter that it was communicated to Ritesh Properties that the Empowered Committee had considered the proposal of M/s Krishna Infrastructure Project for setting up the said Integrated Industrial Park and had approved the land use as proposed, subject to fulfilment of few conditions, including payment of dues. The concessions were given by the Punjab Government was detailed in annexure to the said letter. I note from the said annexure having heading "Concessions Granted to Industrial Park Project" that the Department of Industries was decided to be the single Nodal Agency for facilitating the project and getting clearances etc. Further, apart from other permissions, permission to dig tubewell in project area and permission under Punjab Mines and Mineral Act was also granted to the Project. One of the concession granted to the company was that "No state agency shall erect any barrier or create hindrance in various connectivities which shall be allowed to the project except on the ground of major law and other problem or national security considerations..." However, with respect to NOC from Pollution Control Board it was communicated that *"Pollution Control Board shall grant NOC and consent to operate to the Green Category Industry to be located in the Industrial Party in 30 days from fulfilment of all the required terms and conditions."*
25. I note from the above letter that Punjab Government had approved the said project subject to few formalities and conditions including NOC from Pollution Control Board. I am of the view that the NOC from Punjab Pollution Control Board cannot be said to be incidental approval, as submitted by the company and the project cannot be said to have obtained all the requisite approvals without obtaining NOC from Pollution Control Board. I therefore, am of the view that the company has made a false and misleading disclosure in this regard.
26. Further, the announcement dated January 08, 2007 also announced to the stock exchange that initial work of the site has started and formal launch of the project will take place within a month. However, when SEBI advised Ansal to inform about the status of construction work undertaken in the project, Ansal submitted that only basis infrastructure work was being done. On the basis of the above it was alleged that the company had made false and misleading announcement. The company in its reply has submitted that it had announced that initial work had started and not that the construction of building had started, as has been construed by SEBI. The "initial work" as has been disclosed by the company, includes land survey, soil testing, water testing, landscaping, sewage initiation etc., which are also 'infrastructure work' as has been informed by Ansal. I find merit in the submission of the

company that "initial work" need not be inferred as "initial construction" of the building. However, I am of the view that when such crucial NOC from Pollution Control Board was not granted to the project, one month timeline given for formal launch of the project was misleading.

27. It has been alleged that while, Ritesh Properties made an announcement on February 2, 2008 about the decision of their board of directors to issue 1,92,308 equity shares of Face Value of ₹ 10/- each at a premium of ₹ 120/- to NDTV Ltd., but on April 01, 2008 the company did not disclose about the intimation of NDTV about withdrawal of subscription from the proposed preferential equity allotment. The company has submitted that it had instructed its staff to send the information to the BSE on April 5, 2008, however, the staff inadvertently failed to courier the same. The company's submission in this respect cannot be accepted. It is the company's responsibility to ensure that the price sensitive information is disseminated to the stock exchange. I find that the company cannot shrink its responsibility from the same by stating that it was the failure of its staff.
28. It is an admitted fact that the price of the shares of company rose from ₹ 84.7 on February 04, 2008, i.e., next working date from the date of announcement, to ₹ 99 on February 07, 2008. However, the company has pointed out that the share price again fell down to ₹ 87.7 on February 08, 2008 and then further fell to 72.55 on February 14, 2008. Thereafter, the shares price again rose upto ₹ 86.75 on February 02, 2008 without any announcement by the company. I am of the view that here the only question to be decided is whether the announcement in question is price sensitive or not. In the present matter as the price of the scrip increased immediately after the announcement on February 2, 2008 about the decision of the company's board of directors to issue equity shares to NDTV Ltd, it is clear that the announcement was price sensitive. I, therefore, am of the view that the information about the withdrawal by NDTV of subscription from the proposed preferential equity allotment was also a price sensitive information, which the company failed to disseminate to the stock exchange.
29. Mr. Sanjeev Arora, Managing Director of the company made announcements in press releases dated May 7, 2008 and May 31, 2008, with respect to company's proposed plans to open 500 outlets of Femella Fashions in the next 5 years and 50 stores by 2007-08 and that they had aggressive retail expansion plans. The company also made the same announcements at BSE on May 21, 2008 and June 2, 2008, respectively. The above said announcements by the company and Mr. Sanjeev Arora were alleged as misleading since the investigation revealed that the company had merely 5 outlets of Femella Fashions in 2009 as against the public announcement of 500 outlets. The company submitted that the said announcements were made on certain projections in relation to its wholly owned subsidiary. However, due to unprecedented financial crunch across the world and recession in retail sector, the said announcement did not materialise. I note that though the projections about business expansion are subject to economic environment, however, the company has not furnish any

evidence such as market survey, funds earmarked, places identified, etc. to suggest that it had taken some steps in the direction of the announcement, in order to substantiate that it actually had plans to open 500 outlets and the announcement were genuine. I therefore, find that these announcements were false and were made without intention to implement the same.

30. Further, I note that when the company later discovered that the announcements made by it were non-realistic, it did not take any steps to withdraw the positive announcement in an effort to present a correct and accurate picture to the general investors. I note that by not making disclosure of negative announcement and by making positive announcements with abundant aggressiveness, the company has presented a disdainful attitude towards the disclosures based regulations. I further note that price of shares of the company steadily increased from ₹ 121.40 to ₹ 131.60 due to these two announcements. Considering the above, I find that the company by making false announcements on stock exchange manipulated the price of its shares and mislead the gullible investors.
31. On December 23, 2006 the shareholders of the company, in the EGM, passed a resolution to allot 12,50,000 shares each, to Shree Attam and Vishal Concast at ₹ 20. It is an admitted fact that these shares were not allotted within 15 days. However, the company has submitted that the allotment on preferential basis was pending on account of pendency of approval of the allotment by BSE and the shares could be allotted only March 23, 2007 after in-principle approval was granted by BSE. The company has submitted copies of letters of the company addressed to BSE and BSE's letter in response, to substantiate its submissions.
32. I note that vide letter December 16, 2006 the company had informed BSE that its board of directors in its meeting held on November 25, 2006 had approved the allotment of 25 lac shares of ₹ 10 each at a premium of ₹ 10 each on preferential basis to Shree Attam and Vishal Concast. The company also requested for in-principle approval for the proposed preferential allotment. Vide letter dated December 27, 2009, BSE advised the company to submit *inter alia* copy of resolution passed under section 81(1A) of the Companies Act. Vide letter dated January 02, 2007 submitted a copy of the resolution under section 81(1A) of the Companies Act and the EGM notice sent to all the shareholders. BSE vide its letter dated January 05, 2007 observed that the shareholding pattern (Pre-issue and Post-issue) of the company and the class of the allottees have not been disclosed in the EGB notice to shareholders. Vide letter dated January 25, 2007 the company informed BSE that it is sending notice of the EGM to be held on February 28, 2007 incorporating therein the required disclosures for ratification by the shareholders among other resolutions to be passed. Further, from the notice dated January 20, 2007 informing about the EGM scheduled on February 28, 2007 and the transaction of the business at EGM, I note that one of the agenda was "to consider and if thought fit to ratify and adopt the shareholding pattern of the company and the identity of the proposed allottees pursuant to the resolution passed by the shareholders in EGM held on 2312.2006". Further, Explanatory statement detailed

shareholding pattern of the company before and after the proposed preferential allotment of equity shares and identity of the proposed allottees. Thereafter, BSE vide its letter dated February 06, 2007 granted in-principle approval for issue and allotment of 25 lac shares. The in-principle approval was valid only for 15 days from February 06, 2007. Vide letter dated February 21, 2007, the company citing poor health of its chairman sought extension of two weeks. BSE vide its letter dated March 13, 2007 granted extension of time for allotment of shares upto March 28, 2007. Further, I note that company had allotted the shares on March 23, 2007.

33. I note that proviso of the clause 13.4.1 of DIP Guidelines makes an exception from the general rule of completion of preferential issue of financial instrument within 15 days from the shareholders approval of preferential issue does not apply. Proviso provides that where the allotment on preferential basis is pending on account of pendency of any approval of such allotment of any regulatory authority or the Central Government, the allotment shall be completed with 15 days from the date of such approval. In the present case I note that in-principle approval was pending for approval with BSE from January 02, 2007 to February 06, 2007. Further, BSE had granted extension of time upto March 28, 2007. Considering the above, I find the present matter falls squarely in the situation covered by the proviso of clause 13.4.1 of DIP Guidelines. I, therefore, find merit in the submissions of the company.
34. It has been alleged that again in AGM held on September 29, 2007, the shareholders passed a resolution to allot 40,00,000 share warrants of face value of ₹ 10/- each at a premium of ₹ 45/-. However, the allotment of share warrants was done only on November 26, 2007 i.e. after 42 days. Considering the reply of the company in regard, I note that the company that vide its letter dated September 15, 2007 had sought in-principle approval from BSE for the proposed issue. Vide letter dated October 30, 2007, the company sent a reminder to BSE. Finally on November 12, 2007, BSE granted in-principle approval for the proposed issue and within 15 days from grant of in-principle approval, on November 26, 2007 the share warrants were allotted on November 26, 2007. I find that this situation also falls squarely in the situation covered by the proviso of clause 13.4.1 of DIP Guidelines. I, therefore, find merit in the submissions of the company.
35. It has been alleged that the company made misleading financial statement in connection with sale of a flat in Mumbai. The company had considered income of ₹ 150 lacs from cancellation of property contract as 'Net Sales / Income from Operations' in the quarter ending December 31, 2006 itself, i.e. before the execution of cancellation deed and receipt of consideration for cancellation. Further, the said income of ₹150 lacs was entered in the books of accounts on March 31, 2007 and was shown as real estate revenue as on March 31, 2007 and included in Sales & Services (Income from Operations), which, in the opinion of the SEBI appointed auditors, should have been included in "Other Income" and not in "Net Sales/Income from Operations".

36. The company has submitted that it had paid advance amount of ₹ 10,000/- and entered into a MoU dated March 10, 2005 with Suyojit Infrastructure Ltd. (Suyojit) for purchase of office space in Nashik, Maharashtra. Subsequently, the possession of the said office space was not given to the company and Soyojit agreed to pay a compensation of ₹ 1.5 crore, accordingly cancellation agreement dated March 28, 2007 was signed. The company has submitted a copy of the MoU and cancellation agreement. I note that that the MoU was signed on the ₹ 100 stamp paper and not registered. Further, the MoU did not have any provision of compensation. I note that the company has claimed that ₹ 1.5 was entered into its books on accrual basis and later it had actually received ₹ 1.5 crore from Soyojit, however, the company has not submitted any evidence in support of its submissions that it had actually received the said ₹ 1.5. Apart from the above fact, such huge compensation of ₹ 1.5 crore for cancelation of agreement that too on investment of ₹ 10,000/- creates a probability that these were sham transaction and were done with an intention only to inflate the revenue of the company.
37. The company has further submitted that the damages received by the company were primarily on account of real estate business of company, which is one of the main objects of the company and not on account of any other ancillary/miscellaneous businesses of the company. Furthermore, irrespective the categorization of income, the 'net profits' of the company would remain the same, whatever may be the accounting treatment.
38. I note that the time when the MoU was entered into, real estate business was not the object the company. Therefore, it can be said that when the company entered into MoU, it did not have any intention to make profit out of the said transaction. I, therefore am of the view that the profit made out of such sale will be accounted under the head "Other Income" and not "Income from Operations" as has been done by the company. I find that though the net profit of the company would have remained same in either way of accounting but the company by accounting the 'compensation from the cancellation agreement' as 'Income from Operation' gave an untrue and rosy picture of its business operations, which had a positive effect on the price of the shares of the company. I find that such misrepresentation of the operations of the company has been used as a device to influence the price of the shares of the company.
39. It has been alleged that Ritesh Properties had entered into collaboration agreement with Ansal on July 14, 2006 for development of 40 acres of land. As per the clause 12 of the said agreement Ansal had exclusive rights to sell the developed land. However, in contravention of the terms of the said collaboration agreement, on March 19, 2007 Ritesh Properties entered into an agreement to sell 1,73,900 sq.ft of land with Estate Investments Solution for a total consideration of ₹ 40 crores. The company has accepted the above facts but has submitted that it had concurrence from the developer, Ansal, before carrying out the said sales. I note that the company has not submitted any evidence in support of its submission.

40. Further, the collaboration agreement provided that Ritesh Properties and Ansal would share the revenue at the rate of 22.5% and 77.5%, respectively. However, Ritesh Properties recognised and published the entire sale consideration of ₹ 40 crores as revenue and 77.5% of the sale consideration, i.e. share of Ansal as expenses under "Material Consumed". I note that Ritesh Properties by following this accounting practice in financial year 2007-08 and 2008-09 had recognised entire sale consideration as revenue of ₹ 85.34 crore and ₹ 36.99 crore, respectively, and share of Ansal as expense under "Material Consumed". The company has accepted these facts however, has submitted that collaboration agreement between the company and Ansal, only envisages sharing of revenue and does not contemplate the manner in which the monies can be booked/received. Ritesh Properties further submitted that as the agreement to sell with the buyers were executed by the company and Ansal was not a recognised party under the said agreement with the buyers, therefore, the income from sales could not have been apportioned to Ansal before the same is recognised by the company in its books. I do not find any logic in the submissions of the company. I note that even after using this method of accounting the net profit of the company remained same, however, by recognising the entire sale consideration as revenue and Ansal's share as "Material Consumed" the company gave an inflated picture of turnover of the company, which had a positive effect of the price of the shares of the company. I, therefore find that such misrepresentation of the turnover of the company has been used as a device to influence the price of the shares of the company.
41. It has been alleged that in the quarterly financial results from quarters ending March 31, 2007 to the quarter ending December 31, 2008, Ritesh Properties had recognized and published the real estate income booked in connection with the development of 40 acres of land owned by Ritesh Properties and three other related entities. However, the collaboration agreement, for the development of the entire 40 acres of land, entered with the developer, viz; Ansal on July 14, 2006, had been executed solely by Ritesh Properties without disclosing interest of other three owners. I note that the company has submitted that collaboration agreement between the company and Ansal, only envisages sharing of revenue and does not contemplate the manner in which the monies can be booked/received.
42. Further, agreement/MOU/arrangement for, pooling of the land for development, sharing of revenues, income, expenses etc. between the said four entities, and Ritesh Properties, were not available with Ritesh Properties.
43. As per the collaboration agreement 'Revenue Sharing' provides for sharing of the revenue between Ritesh Properties and Ansal at 22.5% & 77.5%, respectively, and Ansal was exclusively entitled to sell entire built up area including the share of the owner at a mutually decided pricing in writing. In contravention to the terms of the said collaboration agreement, Ritesh Properties entered into an agreement to sell 1,73,900 sq.ft of land for township/housing on March 19, 2007, with Estate Investments Solution for a total sale consideration of ₹ 4000 lacs. It was found that Ritesh Properties had recognized and

published the revenue of ₹ 900.00 lakhs from real estate being 22.5 % of the sale consideration of ₹ 4000.00 lacs, as provided in clauses 11 and 12 under the head “Revenue Sharing” in the quarter ending March 31, 2007. However the entire share of revenue was reflected in the published financial statements of Ritesh Properties for the quarters ending March 31, 2007, without any amount being apportioned to the other four owners. It was also found that in subsequent periods ending 2007-08 and 2008-09 the entire sale consideration was recognized as revenue. Subsequent to March 31, 2007, Ritesh Properties deviated from the methodology of recognition of revenue from real estate that was followed in 2006-07 by recognizing the entire sale consideration as revenue including share of Ansal which has been charged as expenses under "Material Consumed". Further no sale consideration was received from any of the parties with whom agreements to sell were entered into. The land continued to appear as Fixed assets and not as stock in trade till as late as the quarter ending March 31, 2008. Therefore, it was alleged that the company has falsely overstated the turnover and the expenses amount in its financial statement.

44. I note that the company has made submissions that it in its notes to account on page 27 of the Annual Report for the year 2007-08, has stated that the sale deed and the possession of the said land is with the company and its associate companies. I note that as a measure of transparency the company should have made public such information by disseminating it through the stock exchange on which it is listed. Information which is published through stock exchanges attracts the attention of investors in the shares of such scrip and they are in a better position to take decision on their investment in shares of such scrip.
45. With regard to pooling arrangement with other co-owners and showing the entire revenue generated as its own; further, in subsequent period deviating the methodology by showing entire sale consideration as its own and then charging the share of Ansal under the head Material consumed, I note that in both the conditions the revenue generated by the company showing its own income, reflects to the general investors that the company was engaged in projects which were generating huge revenues for it showing positive/strong financial status of such company. Such false projection by the company attracts innocent investors for investing in the scrip. I am of the view that Material Consumed is a head wherein a portion of revenue which was utilized for making the product should be shown for e.g. it may include raw material consumed, spare parts, loose tools etc.
46. I do not find merit in the submissions of the noticee that in a case where land is used for development of property, the ultimate transfer of title happens only at the completion of the development. It is stated that there are divergent accounting practices in the real estate industry, more so, with specific reference to the accounting treatment of land in the books accounts of a real estate company. I note that when the company entered into agreement with Ansal, it also entered into sell agreements with some entities. On one side the noticee had started showing revenue generated from real estate and on other side it showed the same land, which was provided for development to Ansal, in its account as fixed asset. Such a

treatment in the financial statement of a company is not accepted. Such representation in the financial statements of a company shows that on one side revenue is generated by the company, on the parallel they also see a large parcel of land as fixed asset with the company (which is still to be put for productive purpose), which is misleading.

47. I do not find merit in the submission of the noticee with regard to the agreements for sale of the plot which was entered into by Ritesh Properties in plain papers. Section 54 of Transfer of Property Act, 1882 mandated that in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Therefore, such sale of plot on plain paper without registration of instrument is not as a valid sale. Further, as a matter of practice in real estate industry, all the agreements to sell are executed on plain paper and whenever the possession of the property is handed over to the buyer, a proper conveyance deed is executed, applicable stamp duty and registration charges are thereafter paid.
48. With regard to false and misleading financial statements in respect of sale/turnover from sale and exports of garments, the company has submitted that the amount to be received from subsidiaries is shown as debtors separately.
49. The Noticees have submitted that they have not published the quarterly financial results of the affected quarters since there is no such requirement and they have got approval from the shareholders and stock exchange. I note that there is no provision for publishing revised quarterly financial statement under clause 41 of the Listing Agreement entered by the company with the BSE and the financial statement for the entire year was published.
50. The Noticees have submitted regarding the price-volume variation during the investigation period that they were net purchasers of the shares of the company at peak prices. The shares bought by them are still with them.
51. The company has overstated its revenue & profits without following the applicable Accounting Standards for recognizing revenue from real estate i.e. recognized the real estate revenue, which was not in existence at the time of recognition and published in its financial quarterly results, thereby giving a false notion of Ritesh Properties's turnover, revenue and profits to the investing public.
52. Mr. Sanjeev Arora, Mr. Roop Kishore Fatehpuria and Mr. Rajiv Arora were the directors of the company and therefore 'officer who is in default' under section 5 of the Companies Act, therefore, are liable during the investigation period.
53. Considering the above facts and circumstances of the case, I am of the view that Ritesh Properties and Industries Ltd. its directors namely Mr. Sanjeev Arora, Mr. Roop Kishore Fatehpuria and Mr. Rajiv Arora have violated the provisions of section 12A (a), (b) and (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c) & (d), 4(1) and 4(2) of PFUTP Regulations as alleged in the respective SCNs and SCCN.

54. I, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof, and regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 hereby restrain the following entities from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the period as mentioned in the following table :-

Sl. No.	Name	PERIOD
1.	Ritesh Properties and Industries Ltd.	3 years
2.	Mr. Sanjeev Arora, Managing Director	3 years
3.	Mr. Roop Kishore Fatehpuria, Director	3 years
4.	Mr. Rajiv Arora, Director	3 years

55. This order shall come into force with immediate effect.

56. A copy of this order shall also be served upon the depositories and stock exchanges for necessary action on their part.

Sd/-

Date : January 13th, 2016

RAJEEV KUMAR AGARWAL

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA