

MOCKTEST PAPER 1
FINAL (NEW) COURSE: GROUP – II
PAPER – 6D: ECONOMIC LAWS

*Attempt any **four** out of **five** case study based questions.*

Each Case Study carries 25 Marks.

Time Allowed – 4 Hours

Maximum Marks – 100

Case Study 1

Way back in November, 2011, Mr. Hariharan Reddy, a senior professor of Biology in the University of Hyderabad, booked a 3BHK apartment in Royal Golf Burg - an impressive and integrated housing project proposed to be developed by a reputed builder popularly known as Raj Group. The project was large enough to accommodate 1200 fully-furnished apartments of different sizes spread out in 15 towers; each tower having 80 apartments. In addition, a Golf Course and a three storeyed mall was also to be developed. This project was to come up near Shankar pally Road, Hyderabad, a non-polluting and posh area having all the facilities in close vicinity including ultra-modern cinema halls, markets, schools, colleges, hospitals, etc.

As mentioned above, the Raj Group which undertook to develop Royal-Golf-Burg consisted of Dhanraj and his younger brother Yuvraj, a well-known figure of Hyderabad. Both the brothers were the directors of Eklavya Estates Private Limited (EEPL) which had registered office at Gachibowli, Hyderabad. EEPL owned the plot of land where the proposed housing project including mall was to be developed.

The gated residency with a nice and peaceful environment as provided by Royal Golf Burg was meant for golf lovers who wanted to live a sleek and sporty lifestyle by making golf playing a routine. The glamour which attracted Mr. Reddy the most was that every apartment owner after occupation would feel the ownership of the golf course due to its strategic location vis-à-vis each apartment.

The management team of EEPL comprised seasoned architects and professionals who had, in the past, made luxurious homes possible for every home-buyer and the team was considered to be a dedicated one having will and honesty as its strong pillars which could build integrated properties with excellent infrastructure and services. The builders had completed several giant opulent projects in Guwahati, Mumbai and Bhopal earlier. In case of Royal Golf Burg, the company was to give delivery of fully furnished apartments by December, 2017. Construction cost including the cost of the land was valued at around Rs. 800 crores.

The current project, however, missed the deadline of December, 2017 and on the date of delivery, it was noticed that only six towers were completed; but the apartments in those towers were yet to be furnished. Other three towers had been constructed with a skeletal structure. In other six towers, only the foundation and a negligible wall work had been completed. In other words, the construction work was just at the initial stage and nothing more than that. However, the construction of Mall was almost complete. This angered the home-buyers including Mr. Reddy a lot but their repeated visits to the office of promoters did not evoke any positive response. Six months passed without any significant happening. Nothing was done to furnish the already constructed apartments or to develop the other nine towers. Disappointed, Mr. Reddy and others approached Telangana State RERA authorities for redressal of their grievances including filing of complaints regarding non-delivery of apartments.

Telangana State RERA, after detailed inquiry, found that there were several financial irregularities together with diversion and siphoning of funds. More than two hundred shell companies were floated in the names of peons and drivers to divert money. Further, unaccounted money worth crores of rupees was invested in various other housing projects floated by the Raj Group which sold these flats at throw-away prices on paper but received black money in cash which was laundered through various shell companies operated by the Raj Group. This attracted the provisions of Prevention of Money Laundering Act, 2002.

In case of 250 apartments built in the six towers, double allotment was also detected where the apartments were allotted to the persons more than their entitlement at a very nominal amount. It included the person himself, the spouse or dependent children; and almost in all cases such persons were found to be connected with the promoters. The double allotment deprived the genuine home-buyers who had parted with their hard-earned money from getting even the deserving allotment of apartments despite paying around 80% of the cost. The double allotment was considered to be a form of unfair practice in which the promoters were involved. Enquiry by the RERA Authority also revealed that ten gardeners and drivers of Raj Group who had no means of paying the price of ten apartments were allotted the flats though consideration came from the Raj Group itself.

A show-cause notice was issued by Telangana State RERA authorities to the developers asking them to provide a satisfactory response within a period of 30 days from the date of the notice as to why the project should not be de-registered. The response given by the directors, however, was dismal, lacked substance and was not at all satisfactory.

However, de-registration of a building project is not an ideal choice for the authorities keeping in view the larger interests of the stakeholders as well as the nation as a whole and it is resorted to only when all the possible avenues of reaching a comfortable and plausible solution are shut. Therefore, as a last attempt before going for de-registration, RERA authorities in the interest of the allottees, permitted the developer EEPL to continue with the project and complete it in the next one year at the most subject, however, to the payment of a fine equivalent to 10% of Rs.800 crores within next thirty days.

However, the developers, seemed to be not serious at all so far as completion of housing project was concerned. They did not make use of this golden opportunity; thus, letting the project slip out of their hands. Citing insufficiency of the funds, they did not cough out the required fine of Rs. 80 crores within next thirty days and therefore, the Telangana State RERA authorities were forced to de-register the project and an order to this effect was passed. Thereafter, finally the project was taken over by RERA Authorities.

After take-over, RERA authorities with the concurrence of the State Government imposed various restrictions and controls on the project and the developer. These included:

- Freezing of various bank accounts due to which the developer was not allowed to make any payment or withdraw from these accounts without the authority's approval.
- Debarring the developer EEPL from accessing the web-site of RERA in relation to the project.
- RERA offices in other States and Union Territories were given information about such a revocation.
- As a part of name and shame, the name of the EEPL was mentioned in the list of the defaulters along with the photographs of Dhanraj and Yuvraj and also relevant information about the case was displayed.

The officials of Telangana State RERA opined that after de-registration, there were several options before them to solve the issue in favour of home-buyers. The authority could give the first right of completion of the project to the home-buyers. If case the buyers were not in a position to do so by pooling their resources together and required RERA to supervise the development work which could be undertaken by another trust-worthy developer, then the RERA Authority could take steps to develop mechanism to supervise the project.

In case there was not enough money left in the project fund, the Authority could also start proceedings to recover the diverted funds from the EEPL and it could also explore other possibilities to complete the project if the home-buyers so wished.

The response from the Home-buyers' Association of Royal Golf Burg was positive and therefore, a conciliatory committee was formed. President and Secretary of the Home-buyers' Association were nominated to the committee and RERA then appointed Mr. Yudhister Pal, a retired IAS Officer as a conciliator to supervise the operations of the committee. Another developer Uttam Constructions Private Limited was given the charge to complete the project within one year under the supervision of RERA Authority represented by Mr. Yudhishtira Pal.

RERA ordered that all money realised from the sale of Mall as well as remaining dues to be given by the home-buyers would flow into an 'Escrow Account' opened solely for the construction of the project and Mr. Yudhister would release the funds only with the consent of the President and Secretary of Home-buyers' Association. Proceedings to recover the diverted funds from the EEPL were also started. It was hoped that the project would be completed as per the new schedule.

Multiple Choice Questions (MCQs) [2 Marks each]

1. RERA Authority passed the order of de-registration of Royal Golf Burg Project against its promoter EEPL. Within how many days of receipt of order of de-registration, EEPL, as aggrieved party, can file an appeal with the concerned Real Estate Appellate Tribunal?
 - (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 120 days
2. The promoter EEPL did not complete the Royal Golf Burg Project within the projected time-frame as shared through declaration with RERA Authorities while seeking registration under Section 4. For such contravention, how much penalty the EEPL is liable to pay?
 - (a) Penalty may extend up to 2% of the project cost
 - (b) Penalty may extend up to 5% of the project cost
 - (c) Penalty may extend up to 10% of the project cost
 - (d) None of the above
3. In case of Royal Golf Burg project, it is seen that it was de-registered by the RERA Authorities due to various irregularities. Choose from the given options as to who shall have the first right of refusal for carrying out the remaining development works in case of such revocation of registration.
 - (a) Home-buyers' Association of Royal Burg Golf
 - (b) EEPL
 - (c) Mr. Yudhister Pal, Head of Conciliatory Committee
 - (d) RERA Authority
4. In the above case study relating to Royal Golf Burg, who is Benamidar?
 - (a) Gardeners and drivers employed by Dhanraj and Yuvraj
 - (b) Dhanraj and Yuvraj themselves
 - (c) Hariharan Reddy
 - (d) None of the above
5. In case the Real Estate Appellate Tribunal admits the appeal of EEPL against de-registration of the Project, then within how much maximum time such appeal must be disposed of?
 - (a) Within 30 days from the receipt of appeal
 - (b) Within 45 days from the receipt of appeal
 - (c) Within 60 days from the receipt of appeal
 - (d) Within 120 days from the receipt of appeal

Descriptive Questions

1. According to the above case study, the Royal Golf Burg promoted by the Raj Group was de-registered by the Telangana State RERA authorities because the promoters were found to be involved in certain

unfair and fraudulent practices. You are required to state the various reasons due to which registration granted to a project under RERA can be revoked and the project stands de-registered. **(5 Marks)**

2. In the given case study, the Telangana State RERA authorities resorted to de-registration of the Royal Golf Burg Project due to unfair and fraudulent practices and irregularities followed by its promoters while developing the project and the development was carried out at such a slow pace that ultimately the home-buyers could not get the possession of fully furnished apartments well within the promised time. What are the obligations of the RERA Authority and other matters associated with it if it recourses to de-registration of a project? **(5 Marks)**
3. The circumstances stated in the above case study require the RERA Authority to revoke the registration of Royal Golf Burg Project instead of its extension. State the provisions under which RERA Authority may be required to extend the registration instead of revoking it. **(5 Marks)**

Case study 2

In northern and western part of the country production of sugarcane is reasonably good. But the large amount of pendency of the payments by sugar mills to sugarcane producers is cause of worry. Common platform is essential requirement to provide solution to this problem. **Northwest Agro Produce Cooperative Society** was formed to ensure the timely collection of sale proceeds from sugar mills. Northwest Agro Produce Cooperative Society developed a charter, in form of memorandum for its members, to regulate and control supply, price, term of sales of sugar canes, collection of sale proceed and recovery if required. This memorandum is binding on all the members of society.

Northwest Agro Produce Cooperative Society extend the support to cane grower, by given them offer; to sell their entire farm produce of canes to society at mutually agreed price; which society will further sale to sugar mills. But farmer who avail this facility have to sell his entire farm produce to Northwest Agro Produce Cooperative Society, means farmer can't sale any portion of his farm produce in open market. In order to trade with the sugar mills, and deals with regulatory authorities, financial institution etc; Northwest Agro Produce Cooperative Society decided to promote Limited Liability Company named **North West Agro Limited**. The extracts from latest audited financial statements of North West Agro Limited are as follows;

Sr. No.	Particular	Amount (In Lakhs INRs)
1	Proceed (Net of taxes) from sale of sugar canes	320000
2	Operating assets	72800
3	Paid –up share capital	48900
4	Net Profit	9600

With Passage of time North West Agro Limited became the big hit, for role it play as intermediary; in incredible transformation in process of sale of sugarcane by cane farmers.

Mr. Vijendra Narang, who is CEO of North West Agro limited, heard about forward integration as method of expansion and growth strategy. Mr. Narang prepared a proposal, which is duly approved by board of directors and then by members of company to takeover **Sun Sugar Limited**, by acquiring controlling stake from open market. Sun Sugar Limited is running sugar mills, with global presence.

Around 60% of sales by Sun Sugar Limited constitute exports of raw sugar, majorly to IRAN. One year back Sun Sugar Limited opened one branch office in IRAN, as IRAN starts buying sugar from India, in order to settle trade balance; because IRAN is blocked from the global financial system; including using U.S. dollars to transact its oil sales. On such branch office, during last financial year, annual recurring expenditure in foreign currency out of EEFC accounts; was equivalent to INRs 14000 lakhs.

For last financial year, turnover of Sun Sugar Limited was recorded at INRs 120000 lakhs which was INRs 10000 lakhs more than year earlier to last financial year; whereas operating assets as on reporting date were INRs 27000 lakhs. Paid–up share capital was INR 12600 lakhs. After acquisition both the entities were not merged, both kept respective separate identity.

Sun Sugar Limited has strong domestic network or tie-up with retail shops and stores through which they sale their sugar, under brand name 'Meetha', which constitute around 40% of sale. Such retail shops and stores are provided with instruction not to charge the price more than what is suggested by Sun Sugar Limited although lower prices can be charged and specific jurisdiction is given to each retailer for resale.

Mr. Nair who is head of marketing at North West Agro Limited, also look after marketing at Sun Sugar Limited, according to him; in order to acquire substantial market share (in term of new customers), Sun Sugar Limited has to sell sugar at the prices lower than cost. Ignoring the resistance from the governing body of Sun Sugar Limited, new pricing policy implemented. Resultantly price decreased from INRs 40 per kilogram to INRs 35 per kilogram. But in order to restrict loss, on account of selling sugar at price lower than cost; Sun Sugar Limited ask to all the shopkeeper and stores, through whose counter they are sale their sugar produce, not to bill more than 2 kg of 'Meetha' sugar per purchase

Northwest Agro Produce Cooperative Society promotes another company named **South West Agro Limited**, whose object clause includes; provide weather research and forecast reports, other necessary technical knowledge or guidance to members of parents society apart from conducting market research for North West Agro Limited.

Out market research conducted by South West Agro Limited, it was found that **Moon Sugar Limited**, hold major stake in retail of packed sugar, around 30% across the nation under brand name 'Aur' (Price of which is INRs 40 per Kilogram); which cause stiff competition among the players who sell packed sugar. Since acquisition of Sun Sugar Limited by North West Agro Limited, remains largely successful; hence showing trust in un-organic growth, a bear-hug letter sent to senior management of Moon Sugar Limited. For latest financial year, turnover of Moon Sugar Limited is recorded at INRs 280000 lakhs where as operating assets are of INRs 56800 lakhs. Paid-up share capital is INR 36400 lakhs.

Since Moon Sugar Limited is already undisputed market leader hence refuse the bear hug offer. North West Agro Limited with help of South West Agro Limited performs hostile acquisition and both the companies acquires around 25.5% stake in voting rights each; by tender notice over the stock exchange. Governing body of Moon Sugar Limited restructured completely. Post acquisitions of Moon Sugar Limited, North West Agro Limited got the dominance over the market. Since new pricing policy introduced principle buyer of North West Agro Limited is multifold. Hence company decided to re-price their product, which is renamed also 'Aur Meetha'. New price is INRs 42 per Kilogram. To support the price rise, North West Agro Limited starts restricting supply.

North West Agro Limited also entered in memorandum of understanding with Star Ethanol Limited, which is \$ 20 million (assets base) company for transfer of technology.

Multiple Choice Questions (MCQs) [2 Marks each]

1. Takeover (acquisition) of Sun Sugar limited by North West Sugar limited, will be considered as combination if
 - (a) Assets of enterprise created after merger is equal than INRs 1000 crores
 - (b) Turnover of enterprise created after merger is more than INRs 1000 crores
 - (c) Turnover of enterprise created after merger is more than INRs 3000 crores
 - (d) Assets of enterprise created after merger is more than INRs 3000 crores
2. South West Agro Limited and North West Agro Limited will be considered as group because, these are in capacity of
 - (a) Exercise 26% or more of the voting right of Moon Sugar Limited
 - (b) Appoint more than 50% of members of board of directors in the sun limited
 - (c) Control the management or affairs of the sun Limited
 - (d) All of above

3. Exchange Earners' Foreign Currency Account can be open by foreign exchange earner;
 - (a) Who are not resident in India
 - (b) Who are resident in India
 - (c) Which are situated in SEZ
 - (d) Person of Indian Origin, but residing outside India.
4. Decision of North West Agro Limited, on part of Sun Sugar Limited; not to sell more than 2 kg of sugar per purchase can be categorized as;
 - (a) Exclusive supply agreement
 - (b) Exclusive distribution agreement
 - (c) Refusal to deal
 - (d) None of the above
5. Exchange Earners' Foreign Currency Account can be open with
 - (a) Authorised Dealer - Category I
 - (b) Authorised Dealer - Category II
 - (c) Authorised Dealer - Category III
 - (d) Full Fledged Money Changers

Descriptive Questions

1. Is Northwest Agro Produce Cooperative Society can be considered as 'Cartel'. **(3 Marks)**
2. Does North West Agro Limited hold dominance over market, if yes at what instances you feel it abuse its dominant position? **(4 Marks)**
3. Explain briefly regulatory aspects of combination in respect in light of case for North West Agro Limited and regulation thereof under Competition Act, 2002. **(5 Marks)**
4. Mention provisions regarding expenditure on 'maintaining office abroad' under FEMA, 1999 & related rules. Is expenditure done by Sun Sugar Limited is in violation thereto. **(3 Marks)**

Case study 3

APPRAY is the Karta of a Hindu Undivided family (HUF) also consisting of his wife LAXMI DEVI, 3 sons, SUBHASH, GIRISH and RAJESH. The eldest son SUBHASH runs a Sugar Mill taken over from his father APPRAY.

RAJESH, the third son of APPRAY, always feels ignored by his family, looking for some fast easy money, joins hands with MOHANLAL, who is a Real Estate Agent, who promises to pay RAJESH, a commission in cash if he helps MOHANLAL to buy 25 Acres of Land and hold the land in his name on behalf of one of his customers MANORANJAN in good trust and in good faith. RAJESH agrees and a Purchase Agreement for 25 Acres of Land was registered in the name of RAJESH and one MADHAV RAO. Subsequently, Rajesh entered into several similar agreements in his name on behalf of others.

In due course of time, RAJESH also formed a Company XYZ Pvt Ltd, primarily for a Hotel business, but the source of funding was secret drug dealings. The Company accepted illegal monies in cash as legitimate business transactions with fake income and receipts. The monies were then deposited into the Company's Bank accounts as clean money. He kept fraudulent records, which did not demonstrate the current state of his businesses. Monies in the Bank Accounts of XYZ Pvt Ltd were also often transferred as legitimate business transactions, to the Bank Accounts of RDX Pvt Ltd, which is also in the similar businesses like XYZ Pvt Ltd. Original source of money is thus disguised.

The Company XYZ Pvt Ltd also mobilized funds from various investors, but were never utilized for which they were collected. The Funds were transferred to bank accounts of some group companies, which were mainly paper companies, from where they were systematically siphoned off and were used for purchase of various properties in India.

RAJESH has also held some properties purchased in the name of his wife SUGUNA from his known income from legal sources.

MAHESH is a friend of GIRISH, the Second son of APPRAY is a Company Secretary of a listed Public Limited Company ABC Ltd. MAHESH gives Rs. 5 lacs loan to GIRISH, who in his turn gives loan of Rs. 5 Lacs to his friend RAGHU for investment in the shares of ABC Ltd. RAGHU trades in shares of ABC Ltd on behalf of MAHESH.

MAHESH also ensures that some money is passed on to various legitimate Companies to buy the shares of ABC Ltd so that it results in increase in the price of shares. Intention is to show higher valuation of shares before proposing to the investors or to discourage the shareholders from applying to the buyback scheme.

RAGHAV is the brother in law of SUBHASH, employed in UAE and a non resident Indian. RAGHAV purchased some properties in Mumbai for Rs. 75 Lacs. He paid RS. 40 Lacs through his NRE Account, Rs. 10 Lacs through direct transfer from his salaries account in UAE to the sellers account as advance through normal banking channels, complying with all the procedural requirements, but balance Rs. 25 Lacs payment was made through some unknown sources.

RAGHAV also invested in Equity shares of various Listed Companies in India in the name of his wife DIVYA, who is a Resident in India and himself as joint holders from an account not disclosed to tax authorities in India. RAGHAV also purchased a Flat in Mumbai in the name of DIVYA and himself as joint holders from his NRE Account.

SUBHASH has a married daughter MANGALA, who is a UK resident. SUBHASH invested Rs. 1.50 Crores in a Bank Fixed deposit in the name of MANGALA without her knowledge. Later during the course of enquiries by Tax officials MANGALA denies ownership of Bank Fixed Deposit.

Since all of his children are well settled, due to the old age and deteriorating health conditions of APPRAY and LAXMI DEVI, the family decided to sell off the loss making Sugar Mill. Later after much negotiations, the Sugar Mill was sold to a person well known to the real estate agent MOHANLAL, but unknown to the APPRAY Family, at a reasonable price.

Multiple Choice questions (MCQs) [2 Marks each]

1. Purchase of properties in Mumbai by RAGHAV for Rs. 75 Lacs:
 - (a) Is a Fully valid transaction
 - (b) Is valid to the extent of Rs.40 lacs
 - (c) Fully invalid transaction and to be considered as "Benami"
 - (d) May be Benami to the extent of Rs. 25 lacs, since through some unknown sources.
2. Which one of the following transaction is NOT Benami done by RAJESH?
 - (a) Transaction in respect of a property, where the person providing the consideration to Rajesh is not traceable.
 - (b) An arrangement by Rajesh in respect of a property made in a fictitious name.
 - (c) Property held by Rajesh in the name of his spouse and consideration paid out of known legal sources.
 - (d) A transaction by Rajesh in respect of a property where the owner is unaware of or denies knowledge of the ownership.

3. Share Trading by Raghu on behalf of Mahesh is:
 - (a) Valid transaction since he is not at all connected with ABC Ltd.
 - (b) Can be proved as Benami trading in stock markets by Mahesh, the Company Secretary, who has insider price sensitive information.
 - (c) The transaction is not at all to be considered as Benami.
 - (d) Valid transaction if Girish does the share trading on behalf of Mahesh, out of the loan of Rs. 5 Lacs given by Mahesh
4. Which one among the following statement is correct as per PBPT Act?
 - (a) Resale of the benami property from Rajesh to one of the real owners is a valid transaction.
 - (b) Resale of the Benami property from Rajesh to a person acting on behalf of real owner is a valid transaction
 - (c) The Benami Act prohibits sale of a benami property by Rajesh to a third person
 - (d) PBPT Act prohibits resale of the Benami property from the Benamidar to the real owner or to any person acting on his behalf. Such transactions would be considered as null and void.
5. In respect of transactions done by XYZ Company above, crime money injected into the formal financial system is layered, moved or spread over various transactions in different accounts. This step in money laundering is referred to as:
 - (a) Smurfing
 - (b) Integration
 - (c) Layering
 - (d) Placement

Descriptive questions

1. In the context of various property dealings in the above case study, critically analyze the statement “the provisions of the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) need not necessarily applicable only to persons, who try to hide their properties, but may also sometimes apply to genuine properties acquired out of disclosed funds” **(5 Marks)**
2. In case of confiscation of properties of Rajesh in the above example, how “Fair market value” in relation to a property is defined under Sec 2(16) of the PBPT Act? Also interpret the Rule 3 of Prohibition of Benami Transactions Rules, 2016 when the price is not ascertainable? **(5 Marks)**
3. With reference to various transactions by XYZ Co Private Ltd in the above example, what are the provisions relating to attachment of property involved in money laundering under Section 5 of the Prevention of Money laundering Act 2002? **(5 Marks)**

Case study 4

Alpha Promoter is the promoter of real estate based at New Delhi. The Alpha Promoter proposed to establish the residential project named “**AASHIYANA**” The project plan constituted 50 apartment mix of 3BHK and 2BHK Apartments. It includes 20 3BHK Apartments and 30 2BHK Apartments. The Residential project needs to be registered under RERA. The residential project is based at East Delhi. The Alpha’s son a Qualified Chartered Accountant and a RERA Consultant. Mr. Alpha discuss the proposed projects with his son usually once in the month. Mr. Alpha discussed with his son CA Surendar about the newly established project “**AASHIYANA**” based at East Delhi. The Father Mr. Alpha discuss the applicability of various provisions on the new project “**AASHIYANA**” based at East Delhi with his son CA Surendar under the Delhi Real Estate (Regulation & Development) Act, 2016 and rules made thereto. The father inquired about the prior approval before establishment of new project “**AASHIYANA**”, if any required by Delhi Real Estate (Regulation &

Development) Act, 2016. Further Mr. Alpha inquired about the creation of webpage of the Alpha Promoter on the website of DELHI RERA Estate (Regulation & Development) Act, 2016, after getting Login ID and Password.

Also, Mr. Alpha want to publish the advertisement for the residential project “**AASHIYANA**” for which he wants to know the content. The advertisement specifies the condition of advance payment first without entering into agreement for sale. The advance payment (deposit) shall not be less than 15% of the cost of apartment. Only after payment of such advance of 15% of the cost of the apartment, a promoter will enter into agreement for sale with allottee of the particular apartment. The promoter made the policy for non-disclosure of any stage-wise time schedule of the completion of the project, including the provisions for civic infrastructure like water sanitation & electricity at the time of booking and issue of allotment letter to allottee. The promoter forgot to include any terms for cancellation of allotment in the agreement of sale. The construction started and afterwards the promoter make some major alterations in the sanctioned plans & layout plans as well as nature of fittings without the previous approval from allottees. One of the allottee Mr. Abhay ask for minor changes in his allotted apartment which was further also approved by authorised architect and proper declaration and intimation is also made regarding such minor change to the allottee (Mr. Abhay). Meanwhile, presently the Alpha Promoter intended to transfer the project “**AASHIYANA**” to Beta Promoter (third party) without obtaining any approval.

Issue Raised

- Can Alpha Promoter can transfer the project to the Beta Promoter suo moto?
- Is Alpha Promoter mandatorily required to maintain webpage on the website of DELHI RERA AUTHORITY?
- What are requirements for registration of new residential project “**AASHIYANA**”?
- Can advertisement published with or without mentioning website address?
- Is any possibility of holding right as promoter of not providing any details on stage-wise time schedule of completion of the project at the time of booking to the allottee?
- Is promoter having right to demand more than 15% of the cost of apartment before entering into agreement for sale with the allottee.

Few apartments are purchased in the name of Foreign National (Non-Residents) and few are purchased in joint name of both Indian National (Resident) and Foreign National (non-residents) in light of the provisions of the Prohibition of Benami Property Transactions Act, 1988, the following transactions took place for purchase of Apartment under project “**AASHIYANA**”. The description of such transaction are as follows:

- Mr. X, a non resident in India purchased residential apartment of “**AASHIYANA**” residential project under RERA for INR 50,00,000. The apartment is purchased in the joint name of Mr. X and his sister but the payment is made from unknown source.
- Mr. Y, a non resident in India purchased residential apartment of “**AASHIYANA**” residential project under RERA for INR 60,00,000 in the name of his wife from his NRE Account.
- Mr. Z, a resident in India sold a apartment in India (second hand apartment) of some other RERA registered residential project for INR 50,00,000 which was not in his name and was in unknown person name. But the sale proceed is deposited in his (Mr. Z) personal bank account.
- Mr. P, a non resident in India purchased residential apartment of “**AASHIYANA**” residential project under RERA for INR 50,00,000. The payment is made in parts INR 20,00,000 by P’s NRE account, INR 29,50,000 from unknown sources and INR 50,000 in cash. The registry was done at value of INR 45,00,000 which was paid by own cheque (INR 20,00,000) and from unknown sources jointly (INR 25,00,000).

Based on the above mentioned facts of the case and issues raised you are requested to give professional advice as Corporate Consultant to the Alpha Promoter and allottees of the residential apartment on the below-mentioned questions:

Multiple Choice Questions (MCQs) [2 Marks each]

1. The Alpha Promoters shall not transfer or assign his majority rights & liabilities in respect of a real estate project to a third party without obtaining:
 - (a) Prior written consent from two-third allottees;
 - (b) Prior written consent from two-third allottees; except the promoters
 - (c) Prior written consent from two-third allottees; except the promoters and prior written approval of the Authority.
 - (d) Prior written consent from two-third allottees; except the promoters and prior written approval of the Authority. However, such transfer or assignment shall not affect the allotment or sale of the apartments.
2. The Alpha Promoter needs to get registration of the new project “**AASHIYANA**” through the operationalise web based online system for submitting application for registration of the project within a period of _____.
 - (a) One year from the date of its establishment.
 - (b) One year from the date of its commencement.
 - (c) One year from the date of its initiation.
 - (d) One year from the date of its starting.
3. The promoter Alpha at the time of the booking and issue of allotment letter to the allottee shall be responsible to make available to the allottee the _____.
 - (a) Sanctioned Plans
 - (b) Layout Plans
 - (c) the stage-wise time schedule of completion of the project.
 - (d) All of the above.
4. The Alpha Promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project “**AASHIYANA**” by _____.
 - (a) The allottees;
 - (b) The third party;
 - (c) The association of the allottees;
 - (d) None of the above.
5. Mr. Z, a resident in India sold a apartment in India (second hand apartment) of some other RERA registered residential project for INR 50,00,000 which was not in his name and was in unknown person name. But the sale proceed is deposited in Mr. Z's personal bank account. The given transaction is _____ as per the provisions of Prohibition of Benami Property Transactions Act, 1988.
 - (a) Benami Transaction.
 - (b) Not a Benami Transaction
 - (c) May be a Benami Transaction.

(d) May not be a Benami Transaction

Descriptive Questions

1. In Light of the provisions of the Section 11 of the Real Estate (Regulation & Development) Act, 2016, the Alpha Promoter upon receiving Login ID and password from RERA Authority create webpage on the Website of the authority including all details of the proposed project for public viewing.

Describe in detail what information are required to be disclosed for public view on the webpage of promoter on the Website of the RERA Authority? **(5 Marks)**

2. Under the light of the provisions of "Prohibition of Benami Property Transactions Act, 1988". Examine whether the below mentioned transaction is considered as the Benami Transactions or not?

Mr. P, a non resident in India purchased residential apartment of "AASHIYANA" residential project under RERA for INR 50,00,000. The payment is made in parts INR 20,00,000 by P's NRE account, INR 29,50,000 from unknown sources and INR 50,000 in cash. The registry was done at value of INR 45,00,000 which was paid by own cheque (INR 20,00,000) and from unknown sources jointly (INR 25,00,000). **(5 Marks)**

3. Examine the following:

(i) Alpha Promoter's responsibility when the Real estate Project "AASHIYANA" is developed on a leasehold land. **(2 Marks)**

(ii) Alpha Promoter can cancel the allotment whether or not such terms of cancellation are included in the executed agreement of sale. **(3 Marks)**

Case study 5

Mr Suresh Agarwal, is a Jaipur based banker who joined the Samradhi National bank in the year 2008 as a clerk. He got his first posting at Jodhpur branch. After five years in job, he was transferred and promoted as assistant manager, Bikaner branch of Samardhi National bank. One day he met Archana in the bank, who visited bank to discuss some loan issues of her company with the bank. Slowly they started meeting each other. Both of them like each other and decided to marry after sometime. Archana is a director in a Newtech Software company. They decided to get married after one year. With the blessing of their parents they got married in 2013.

After marriage Archana need to visit America for some business meeting of the company with foreign client. So, they both planned a tour parallelly with the business trip. Company issued Prepaid Forex Travel Card to Archana for all his expenses abroad. The card is loaded with amount of USD 2,50,000. After two days of prolonged business meetings, Archana finally got free to enjoy trip with her husband. They went to Los Vegas and played some games in casino. They paid USD 2000 with the Forex card. They hardly won any amount out of it. They enjoyed shopping and had all fun. After 10 days they return back to India. Archana returned the business card to the company with remaining USD 100000.

Back to daily routine they both got busy with their respective work schedule. As an assistant manager, Mr Suresh got gifts in form of cash and kind all the year round. He came in contact with many rich and successful business owners from different walks of life. They all were happy with him as mostly they got their work done on a single phone call. In the year 2016 post Demonetization, Mr Suresh helped many of his bank customers to launder their money through their bank accounts. He helped one of the bullion trader, Mr Naval Kishore, account holder in his bank. He suggested him to take money from his customers and issue cheque back for the same amount, less 5 per cent. The bullion dealer gave them a purchase bill to show that he had purchased his gold jewellery or silver utensils from him. Then On the amount of the cheque when they will file their return, the customer will have to pay no capital gains tax as jewellery and silver utensils are of personal use, and capital gains do not arise on sale of personal things.

Mr. Naval Kishore with some agents, in past use to trade illegal gold through illicit shell or front companies using false or incomplete documents. The gold is often then smuggled through third-party countries and ultimately sold to refineries in the United States.

Mr Suresh offers to exchange demonetized banknotes for a charge of 10 per cent. Much of this was managed by using scores of individual PAN and Aadhar details already available with his bank. Mr Suresh helped Mr A.K. Bajaj, to exchange demonetized cash, through his workers ID's at the bank. Mr. Bajaj employed nearly 200 workers of his manufacturing units to get the demonetized notes exchanged. The Demonetization period became a blessing in disguise for Mr. Suresh as he was able to amass huge profits out of it.

Chetan singh is a director of XYZ Company Ltd. He use to share a good relation with Mr. Agrawal and he also started giving him attention when he visited bank for day today business. Chetan one day came to Mr. Agarwal to sanction him INR 0.50 crores. The documents required to process the loan was incomplete. The branch manager refused to sanction the loan without completing all the formalities. Chetan had a talk with Mr. Agarwal and promised him to pay 5% of total sanctioned loan amount. So, both of them arranged some forged documents to complete the file with help of one person called Piyush Sharma, an accountant friend of Mr. Agarwal. After the completion of all the formalities Mr. Agarwal gave his clearance regarding completion of the documents, after which his branch manager sanctioned the loan. The deal brought all of them close to each other. After that Mr Agarwal, Chetan and Piyush became good friends.

As Piyush was accountant and an employee in financial advising company he used to meet many people. He got some couple of loans sanctioned with the help of Mr Suresh Agarwal. As a result, on performance basis evaluation Mr Agarwal got the promotion as Bank manager and transferred to the other branch of Bikaner.

Archana in 2016, was appointed as a director, in Zippy International Company Ltd, a foreign based Company. For Couple of months she stayed in Italy for board meeting and giving financial advice regarding the business transactions. In lieu of his service and remuneration she received shares of the company worth USD 3,00,000.

During his period of service in bank, Mr Agarwal was able to accumulate INR 20 lakhs from his unauthorized sources. With this money he bought a plot in his home town Jaipur. The cost of the plot is INR 50 lakhs. To cover up his source of income he took a loan of INR 20 lakh from his bank. Likewise, he invested his income got in his mother's name and got the plot registered.

In 2017, Archana again went to London for company related business. She stayed there for a duration of six months. With a view to invest abroad, she bought a flat there through outwards remittance. She remitted USD 2,49,000 via LRS route.

Mr Agarwal and his wife Archana went on a tour to Qatar and Dubai in 2018. They booked the flight tickets online through their credit card, rest all the expense of logging and boarding was borne by Oyster tour and travel agency. The company recently opened his new branch office in Dubai. The company's AD bank is the bank in which Mr. Suresh is branch manager. He made all the transactions of Oyster tour and travels easy. Whenever Exchange is required by the branch office in Dubai he easily released them. The profit earned by Dubai branch, of Oyster tour and travel was invested, in one company of Dubai engaged into real estate business and its profits is deposited in foreign bank.

Mr Chetan has a planned to earn money through a new export and import business. He submitted a fake factory proposal of garment manufacturing to the bank whose branch manager is Mr Agarwal. Mr Chetan had a plot in the outskirts of the city, where he made some construction to give it a factory look. As per the mutual understanding between both of them some loan of INR 2 crores was sanctioned to ship the machines and other products from abroad. Some fake invoices were prepared to show the dispatched of garment orders on record but sent almost nothing in return. Mr Agarwal and Mr Chetan jointly did all the invoice manipulation. As a result siphoning off of foreign exchange against fictitious and bogus imports. The money was invested abroad in mutual funds and buying properties.

Multiple choice Questions (MCQs) [2 Marks each]

1. Archana went to Italy regarding his official visits as a company director. She bought a flat in Italy through outwards remittance. Can she continue to hold immovable property outside India which was acquired by her when he was a non-resident?
 - (a) With the permission of Reserve bank of India she can hold the property abroad.
 - (b) Without the permission of Reserve Bank of India she can hold the property abroad.
 - (c) The property needs to be sold and the funds transferred should be repatriate back to India.
 - (d) The property needs to be sold out and transferred should be repatriate to her FCNR account.
2. Let's assumed that the plot is bought by Mr Suresh from his known sourced income in his mother's name. Mr. Tarun an NRI wants to purchase that plot. State your answer.
 - (a) Mr. Tarun can buy the plot only with permission of RBI.
 - (b) Mr. Tarun can buy the plot through normal banking channel of India without RBI permission.
 - (c) Mr. Tarun can purchase the plot in foreign currency with permission of RBI.
 - (d) Mr. Tarun can make part payment in foreign currency and partly through his NRO account in India.
3. Archana was allotted USD 300000 shares in the foreign entity in lieu of the professional services rendered by her in lieu of Director's remuneration. Can she acquire such shares?
 - (a) Archana can acquire USD 300000 shares as it is paid against her remuneration.
 - (b) Archana can acquire USD 300000 shares as her remuneration with permission of RBI.
 - (c) Archana cannot acquire USD 3,00000 shares as it is not in permissible limit of LRS.
 - (d) Archana can acquire USD 3,00000 shares under LRS but needs to repatriate the profits back to India after sale of it.
4. Has Suresh and Archana contravene any provision of law, while they sent USD 2000 playing at the casino? Choose the correct answer.
 - (a) They did not contravene any provision of the law to as it was issued to her in official capacity for her trip.
 - (b) They have used the card in violates the provisions of FEMA act and hence liable under it.
 - (c) They did not contravene any provision of the law as it was within the permissible limit of their expenses.
 - (d) They were only liable under FEMA Act if they had won more than USD 2000 and if it is remitted back to India.
5. In post Demonetization period Mr. Suresh helped many of his customers to exchange demonetized currency through various methods. Is he liable for punishment under any provision of the law in India?
 - (a) Mr. Suresh is not liable for any punishment under any provision of law applicable in India.
 - (b) Mr. Suresh is liable to punishment under Part A of the schedule, of prevention of Money Laundering Act.
 - (c) Mr. Suresh is only liable to be punished under Part C of the Schedule, of Money Laundering Act.
 - (d) Mr. Suresh is liable for punishment under Part A, PARAGRAPH 1 and PARAGRAPH 4 of Money Laundering Act.

Descriptive Questions.

1. Advise in the above mentioned two situations as per the relevant applicable law in India?

- (i) Assuming Mr. Suresh wanted to further lease the plot, he bought in his mother name, to a foreign entity who wants to open his liaison office in India.
 - (ii) Can Mr. Suresh Agarwal mother's gift this plot to his niece, an NRI. **(8 Marks)**
2. Examine the given situations in the light of the PBPT Act:
- (i) Explain why the property brought by Mr Agarwal in his mother name is a 'Benami transaction'? **(3 Marks)**
 - (ii) If in case a fraudulent transfer is done by Mr Suresh Agarwal, pending the process of inquiry by the Initiating Officer, what will be the consequences? **(2 Marks)**
 - (iii) State what will the effect if property (the plot in the name of Mr Agarwal's mother name) is confiscated by Initiating Officer? **(2 Marks)**