

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION**  
**BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/PRO – 35 of 2017**

DATE OF HEARING : 14.12.2017

DATE OF ORDER : 24.12.2018

**IN THE MATTER OF:**

Application/Petition under Section 94 of the Electricity Act, 2003 read with Regulation 5.5 of the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial Cum Residential Complexes of Developers) for redressal of Grievances.

**Petitioner**

Ms Amita Sharma & Ors.

**Respondent**

M/s Suncity Project Pvt. Ltd  
Uttar Haryana Bijli Vitran Nigam Limited

**QUORUM**

**Shri Jagjeet Singh, Chairman**

**Sh. P.S. Chauhan, Member**

**PRESENT**

On behalf of the Petitioner

Shri Sunil Gagneja  
Shri Avinash Sharma  
Shri Viney Bhatia  
Shri Arun Kumar  
Shri Ananad malik  
Shri Radam Bajaj

On behalf of the Respondent No 1

Ms. Rajni Bahri, Estate Manager  
Shri P.S. Mathew, Executive  
Shri Raghav Goyal, Advocate

On behalf of the Respondent No 2

Shri Arun, AEE Comml., UHBVNL  
Ms. Sonia Madan

**ORDER**

**1. Brief Submission made by the Petitioner**

The Petitioner has submitted as under:

- 1.0. That we are residents and owners of the respective apartments located in Parikrama Group Housing. We are highly aggrieved by the electricity bills being received for the apartments.

- 1.1. The Respondent No. 1 had got sanctioned Single Point Supply connection under Bulk Supply (Domestic) category from Distribution Licensee (UHBVNL) to supply electricity to the apartment owner (Account Number: A27B50230N).
- 1.2. The Respondent No. 1 has installed dual power supply Electric Meter (which facilitates recording of main supply and backup supply) for supply of electricity to apartments and has started charging from the date(s) of possession.
- 1.3. The Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulation, 2013 (hereinafter referred as Single Point supply Regulation) were issued by the Commission to provide administration convenience to Distribution Licensees and to minimise the harassment of individual consumers from Discoms employees and/or distribution licensees may have one point of contact for meter reading, billing and payments.
- 1.4. Resident(s) in a group housing society having electricity connection under said regulation is for all purpose a consumer under DS category and tariffs and benefits available to person in a DS category are always applicable and available to resident in group housing society also.
- 1.5. That we hereby seek relief/direction on issue of tariff charged to the residents which emerged out allegedly due to the conduct of Respondent by not adhering to certain aspects of Single Point Supply Regulation, 2013 and other order, instruction, circulars, procedures issued by Commission.
- 1.6. That we had been staying in our corresponding apartments since 2016
- 1.7. The respondent has been raising the electricity bills for our apartments since 2016.
- 1.8. The respondent has not been raising bills as per the tariff and the procedure laid in the Single point Supply Regulation even after provisions of the said regulation were brought to their notice. Respondent is charging from the residents as per tariff and rules and regulation decided by them and not as per provisions of the Regulations. Respondent has been charging the tariff at a rate at which Respondent is being charged by the UHBVN.
- 1.9. The respondent's response has been that electricity charges are being recovered from residents/owner as per the payments made by the Respondent to UHBVNL in the monthly bill issued from time to time and that they are not overcharging.
- 1.10. That bills raised by Respondent include:
  - a. UHBVN supplied Electricity Unit Consumption As per the meter.

b. DG set rates charged as per the Unit Consumption in the meter.

That in a case No. HERC/PRO-09 of 2014 (Shri Pankaj Bhalotia vs.M/s. SPR Buildtech Limited (Builder), Faridabad and other) commission had said “6. Commission directs the Respondent No.1 & 2 to levy electricity charge from the residents of the society as per Regulation no. 5.5 of HERC Single point supply Regulation (Regulation No.HERC/27/2013). The electricity bill should clearly show the energy consumed and tariff application including all the relevant details. Further, maintenance charge/any other charge not relating to electricity consumption should not be charge from the electricity meter/bill. The Respondent No.2 cannot charge from the residents of the society more than the domestic tariff approved by the Commission.

- 1.11. That there is no Minimum Monthly charge (MMC) applied in the bills for our society till date.
- 1.12. That as per provision on the Single point Supply Regulation, a resident in a Residential Colony or Group Housing Society for all purposes is to be treated as domestic supply (DS) Category consumer and hence all rules and regulation, Scheme benefits, discount etc. with regard to domestic supply (DS) category consumer will be applicable on such resident. Rebates Concession, Incentive and subsidy as announced by Distribution Licensee (Respondent-4) or by State Government of the Haryana and applicable on domestic supply (DS) Category consumers.

The Petitioner has prayed as under:

- I. The petition, in its present form, may kindly be taken on record.
- II. Condone any inadvertent omissions/errors/ shortcomings and permit petitioner to add /change/modify/alter this filling and make further submissions as may be required at a future date.
- III. To direct the respondent to follow single point supply Regulation and charge its residents as per provisions of the said regulation and pass on credit to individual resident for excess amount charged until change is implemented.
- IV. To direct the Respondent to pass on credits, incentive ,discount, concession, subsidy, rebate whatever name it is called as applicable to a Domestic supply [D S] category consumer to residents of the society as such residents are for all purposes a consumer under Domestic supply [DS] category and is entitled to receive and get all such benefits.
- V. To direct UHBVN to regularly audit all bills raised by the Respondent so that:-

- a. The respondent abides by all rules and/or regulations, guidelines etc laid down by the HERC
  - b. Report any deviation from rules and regulations laid down by the HERC to the HERC and seek direction there upon.
- VI. Direct the Respondent to refund/adjust excess tariff wrongfully charged to each apartment owner by the Respondent with interest and compensation as decided by the Commission.
  - VII. Direct Respondent confirm calibration audit for all electricity meters installed within Parikrama Housing Group at laid down periodicity to make sure that all meters are calibrated within prescribed limits.
  - VIII. Pass any such other order/s and/or/ direction/s which the Commission may deem fit and proper in the facts and circumstance of the case.
  - IX. Please allow leave of absence to us to attend hearing and proceeding of this petition at Panchkula, being working professional and request commission to decide as per merit of case and keeping interest of public at large in mind.

**2. (a) The Respondent No. 1 in its reply dated 27.12.2017 to the Petition has submitted as under :**

- 2.1. That it is submitted that the Order passed in HERC/PRO-09 of 2014 by this Hon'ble Commission, relied upon in para 10 of petition is not at all applicable to the facts of the present case and is distinguishable.
- 2.2. That the answering respondent had developed a Group Housing Society in the name of "Parikrama" at sector -20, Panchkula, after obtaining necessary approvals from the various Government authorities.
- 2.3. That the electrical load and layout plan was approved by the competent authority of UHBVN. As per the approval Single Point Bulk Supply (DS) was approved for this Group Housing.
- 2.4. That on the basis of the above approval, interim load of 1.5 MW was released in November 2015. The first electricity bill was raised by UHBVNL in the month of January 2016. (Photocopy of the bill is attached herewith) average unit rate of this bill was Rs. 7.94 per unit.
- 2.5. That on the basis of the aforesaid first bill, answering respondent have started charging for electricity consumption from the resident as Rs. 7.90 per unit. The electricity connection is a Single Point Bulk Supply. Therefore, the answering respondent is charging the tariff accordingly from the residents and paying the same to the UHBVN and no amount other than

this, is being charged on account of minimum charges, fix charges, meter rent etc. as per the norms of the UHBVN.

- 2.6. That the answering respondent is also giving the benefit of 4% of rebate to the residents on 11KV supply.
- 2.7. That it is submitted that the respondent is using a prepaid metering system with dual feeding arrangement with latest configuration which can be monitored and managed with the centrally controlled monitor.
- 2.8. That it is submitted that answering respondent is not making any profit by supply of electricity to residents and charging the same tariff which the respondent is paying to the UHBVN.

For the reasons stated above, it is prayed that this Hon'ble Commission may be pleased to dismiss the present petition as the same is false and vexatious.

**2. (b) Respondent No.2 submitted its reply as under:**

- 2.1. That the Petitioners herein by way of present petition are seeking redressal of their grievances and are seeking clarification with respect to the various aspects related to single point supply under Haryana Electricity Regulatory Commission (Single Point Supply to Employers Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013 ( herein after referred to as "Single Point Supply Regulations, 2013" for the sake of brevity) framed by this Hon'ble Commission in exercise of the power conferred under Section 61 (d) read with Section 181 of the Electricity Act, 2003 ( herein after referred as "Electricity Act " for the sake of brevity).
- 2.2. That the Answering Respondent Uttar Haryana Bijli Vitran Nigam Ltd. is a Public Sector Company fully owned by the Government of Haryana which has been granted license to distribute electricity by this Hon'ble Commission under Section 14 of the Electricity Act, 2003 and as such is engaged in the distribution of electricity in northern part of the State of Haryana.
- 2.3. That it is submitted that in the present petition, the Petitioners have arrayed M/s Suncity Projects Pvt. Ltd. as Respondent no.1 and Answering Respondent, UHBVN (Electricity Distribution Licensee) as Respondent no. 2. The Answering Respondent is a Government body which provides power to various sectors which include residential, commercial and industrial. The Petitioners are the residents cum owners of their respective apartments. The

Respondent no. 1 emerged with a new project called M/s Suncity Projects Pvt. Ltd and for the same the power supply was to take place from Answering Respondent. The Answering Respondent supplies single point supply but has individual electricity connections released by the distribution licensee at 11 KV or higher voltage.

- 2.4. That the grievance of the Petitioners is that the Respondent no. 1 had charged an electricity tariff rates higher than those being supplied by the distribution licensee for the domestic supply tariff. Since the dispute is an inter-se dispute between the Petitioners and Respondent no 1, which is a group housing society and the same is an independent body which takes its own decisions while charging tariffs for different heads. Any issue with regard to charge of higher tariff as alleged in present petition can only be clarified by Respondent no 1. It is relevant to mention here that the Answering Respondent is concerned only with the initial installation of the power supply system in the Group housing society at its main gate and from there the distribution of the power along with the internal infrastructure is the responsibility of the group housing society i.e. Respondent no.1. It may not be out of place to mention here that after the Single Point Supply Regulation, 2013, all the Supply to Employers Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers is governed by the said Regulations. Further, any deviation and violation of same by the builder/GHSs/RAW would attract consequences under the provisions of the Electricity Act and regulations framed thereunder.
- 2.5. It is further relevant to mention here that the HERC had notified Single Point Supply Regulation vide No. HERC/27/2013 dated 09.01.2013 circulated vide S.C. No. U-07/2013. Also 1st Amendment notified on 14.10.2014 and has been circulated vide S.C. No. U-46/2014. As per clause 5.5, The GHS/Employer /Developer/ RWA will not charge the residents for electricity supplied by the Distribution Licensee a tariff higher than the rates for Domestic Supply (DS) category approved by the Commission from time to time.
- 2.6. In view of the foregoing preliminary submissions, it is most humbly prayed that the instant petition is not maintainable qua Answering Respondent which may kindly be dismissed qua Answering Respondent in the interest of justice.

2.7. **Reply on Merits:-**

- a) The contents of Para 1 are admitted to the extent that M/s Suncity Projects Pvt. Ltd. Parikarma GH Sector-20, Panchkula got sanctioned a load of 1500 KW and the load was released on 12.11.2015 under Bulk Supply (Domestic Category) under Single Point Regulation. The bills are issued as per the Bulk Supply tariff. Rest of the Para is a matter of record.
- b) The contents of Para 2 relate to Respondent no. 1. The Answering Respondent is charging the tariff as notified by the Hon'ble Commission from the date of release of connection. Further, onus to prove the authenticity of the allegations raised by the Petitioners is on Respondent no 1. However, the Answering Respondent is not in any way concerned with the allegations raised by the Petitioners against the Respondent no. 1.
- c) The contents of Para 3, insofar issuance of Single Point Supply Regulations, 2013 is concerned, is a matter of record. The HERC had notified Single Point Supply Regulation vide No. HERC/27/2013 dated 09.01.2013 circulated vide S.C. No. U-07/2013. Thereafter, 1st Amendment was also notified on 14.10.2014 and has been circulated vide S.C. No. U-46/2014.
- d) The contents of Para 4 are wrong and hence, denied. It is wrong to say that all the electricity connections for all purposes under the said regulation shall be charged under DS Category. As per clause 5.3 of Single Point Supply Regulations, 2013, in case an office complex or other non-domestic loads are also existing within the GHS/Colony, the apportionment of energy and combined maximum demand for billing under Bulk Supply (Domestic) category and NDS category shall be as per terms specified in the Undertaking submitted by the Developer in compliance of Regulations 4.2.2 of Single Point Supply Regulations, 2013. The said undertaking has been appended as Annexure-3 in the instant petition.
- e) The contents of Para 5 do not relate to Answering Respondent. However, it is worthwhile to reiterate that relevant provisions of Single Point Supply Regulations, 2013, which defines the obligation of Respondent no. 1 with respect to supply of electricity to Petitioners. As per clause 5 of above referred regulations, the GHS/Employer /Developer/ RWA will not charge the residents for electricity supplied by the Distribution Licensee a tariff higher than the rates for Domestic Supply (DS) category approved by the Commission from time to time. In case any GHS/Employer/ Developer/ RWA charges the residents for electricity supplied by the Distribution Licensee at

rates higher than the Domestic supply tariff, the aggrieved residents can jointly file a complaint against such GHS/Employer/ Developer/ RWA with the Commission through a petition for redressal of their grievance. In case backup supply from the generator has also been made available for the residents, the Group Housing Society/Employer /Developer/RWA will be free to charge the residents separately for the same either in the form of annual charges for backup supply or based on individual consumption of backup supply by each resident/user by providing separate meters for backup supply. It will, however, be mandatory for the Group Housing Society/Employer /Developer/RWA to install a meter at their cost, to record total energy generation by such backup supply generator, which will be got duly tested and sealed from the Distribution Licensee by payment of requisite charges. The backup supply generator meter has to be tested and sealed by the distribution licensee.

- f) The contents of Para 6 are denied for want of knowledge.
- g) The contents of Para 7 are matter of record and hence calls for no reply. If anything is found contrary to records the same is vehemently denied.
- h) The contents of Para 8 do not relate to Answering Respondent. However, it is worthwhile to submit that the Answering Respondent is charging the tariff as notified by the Hon'ble Commission from the date of release of connection. As already stated above, the GHS/Employer /Developer/ RWA cannot charge the residents for electricity supplied by the Distribution Licensee at a tariff higher than the rates for Domestic Supply (DS) category approved by the Commission from time to time. In case any GHS/Employer/ Developer/ RWA charges the residents for electricity supplied by the Distribution Licensee at rates higher than the Domestic supply tariff, the aggrieved residents can jointly file a complaint against such GHS/Employer/ Developer/ RWA with the Commission through a petition for redressal of their grievance. In case backup supply from the generator has also been made available for the residents, the Group Housing Society/Employer /Developer/RWA will be free to charge the residents separately for the same either in the form of annual charges for backup supply or based on individual consumption of backup supply by each resident/user by providing separate meters for backup supply. It will, however, be mandatory for the Group Housing Society/Employer /Developer/RWA to install a meter at their cost, to record total energy generation by such backup supply generator, which will be got

duly tested and sealed from the Distribution Licensee by payment of requisite charges.

- i) The contents of Para 9 do not relate to Answering Respondent. The contents mentioned therein can only be answered upon by Respondent no. 1.
- j) The contents of Para 10 are a matter of record.
- k) The contents of Para 11 do not relate to Answering Respondent. The contents mentioned therein can only be answered upon by Respondent no. 1.
- l) The contents of Para 12 is wrong and hence, denied. It is respectfully submitted that the Non-Domestic load will be charged as per the NDS tariff and the Domestic load will be charged as per the Domestic tariff or Bulk Supply Domestic tariff. The rebates, concession, incentives and subsidy are already covered in the tariff.
- m) Prayer Clause is wrong and hence denied. In response to prayer clause (v) of the petition, it is submitted that in view of Clause 5.7 of HERC (Single Point Supply to Employers Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers)

### **3. Proceedings.**

The matter was heard by the Commission on 04.10.2017, as scheduled. The representatives of both the parties were present.

Sh. Sunil Gagneja on behalf of the petitioners submitted that the developer Respondent No 1 i.e M/s Suncity Project Pvt. Ltd has been charging electricity consumed at flat rate Rs. 7.9 per unit from the individual owners/consumer. This is in violation to the HERC (Single Point Supply) Regulations 2013 and UHBVN Sale Circular No. U-27/2017. He also submitted that the Developer is also charging the electricity consumed for other tower under construction from the resident who has occupied the flat.

Per contra, Shri P.S. Mathew, on behalf of Respondent No 1, submitted that they are having a single point bulk supply connection from the Distribution Licensee and charging the electricity bills from the 1200 flat owners through pre paid metering system. As per the bills issued by UHBVN, Flat rate per unit is being charged from the individuals and the benefit of 4% rebate is also being passed on to the owners of the flat. He also submitted that despite best efforts, they are not able to recover all the electricity charges being paid to the UHBVN.

On query, he admitted that no MMC charges are being recovered from the un-occupied flat owners. He submitted that as far as electricity supply for

construction work is concerned, they are having a separate connection for the same and no electricity charges are being recovered from the residents residing in the society.

After hearing the case at some length the Commission observed that the electricity charges are not being recovered by the developer from individual residents as per the HERC Regulations. The Commission directed the Respondent No. 1 to file the written submission with the details of the last 2 months bills paid to the UHBVN along with the recovery of the amounts from the consumers/owners. The representative of Respondent No. 1 requested to allow at least 10 days time in this regard which the Commission allowed. Acceding to the request of the Respondent No 1, the matter was adjourned for next date of hearing.

Rejoinder by Petitioners.

The petitioners filed a rejoinder on 29<sup>th</sup> Nov 2017 as under:-

- (a) *“To direct the respondent to follow single point regulation and charge its residents as per provisions of the said regulation and direct the Respondent to refund/adjust excess tariff wrong \fully charged to each apartment owner by the respondent with interest and compensation as decided by the commission as prayed in the application cum Petition filed in said case.”*
- (b) *“To direct or to pass any such order/s and/ or/ direction/s and/ or penalty against the developer which the commission may deem fit against developer in not complying the interior order by the Hon ‘able commission dated 10<sup>th</sup> Oct 2017.”*

The petitioners submitted as under:-

- i) Please refer following:-
  - a) HERC interim order dated 10<sup>th</sup> Oct 2017.
  - b) Reply for and on behalf of Respondent No 1 dated 11<sup>th</sup> Oct 2017.
- ii) As per para-5 of the interim order issued by Haryana Regulatory commission (HERC) on dated 10.10.2017, the Hon’ble HERC directed Respondent No 1 i.e M/s Suncity Projects Pvt. Ltd. *“to charge the consumers as per the tariff approved by the Commission and to file the written submission with the details of the last 2 bills paid to the UHBVN along with the recovery of the amounts from the consumers/owners. The representative of Respondent No. 1 requested to allow at-least 10 days time in this regard.”*

- iii) That the Respondent No.1 violated the aforesaid Hon'ble Commission order dated 10.10.2017 by not charging the consumers at the rates approved by HERC instead charging the consumers at the flat rate per Unit of Electricity consumed. The electricity bills of the petitioners issued by Respondent No. 1 for the month of October 2017 was attached.
- iv) By not complying with the directions of the Hon'ble Commission order dated 10.10.2017 the Respondent no. 1 may be punished under Section 142 & 146 of Electricity Act 2003 stipulates as under:
- Section 142** of Electricity Act 2003 i.e Punishment for non-compliance of directions by Appropriate Commission stipulates that *“In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”*
- v) **Section 146** of Electricity Act 2003 i.e *“Punishment for non-compliance of orders or directions”* stipulates that *“Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence”*

It has been prayed that:

- i. The Rejoinder, in its present form, may kindly be taken on record.
- ii. Condone any inadvertent omissions/errors/ shortcomings and permit petitioner to add /change/modify/alter this filling and make further submissions as may be required at a future date.

- iii. To direct the respondent to follow single point supply Regulation and charge its residents as per provisions of the said regulation and Direct the Respondent to refund/adjust excess tariff wrongfully charged to each apartment owner by the Respondent with interest and compensation as decided by the Commission as prayed in the Application-cum-Petition filed in said case.
- iv. To direct or to pass any such other order/s and/or/ direction/s and/or Penalty against the Developer which the Commission may deem fit against developer in not complying the interim order passed by the Hon'ble commission dated 10th Oct 2017.
- v. Please allow leave of absence to us to attend hearing and proceeding of this petition at Panchkula, being working professional and request commission to decide as per merit of case and keeping interest of public at large in mind.

Counter to the rejoinder by the respondent No.1.

That the petitioners by way of present petition have prayed that their electricity bill shall be charged by the respondent on the basis of single point supply regulation as applicable to domestic supply category. However, the petitioners have not approached this Hon'ble Commission with clean hands and have withheld their apartment buyers agreements as well as the maintenance agreement which has been duly executed between the petitioners and respondent No.1 at the time of sale of their respective apartments. A template of the apartment buyers agreement as well as maintenance agreement is attached.

That as per clause 34 of the apartment buyers agreement it has been acknowledged and understood by the petitioners themselves that the respondent No.1 being the owner would receive and distribute electrical energy from bulk supply domestic category connection of electrical energy in the Multi Storied Residential Group Housing Colony owned by the respondent No.1. The petitioners being the allottees have also given their consent and undertaking to pay proportionate charges of electricity bill as determined by the owner. Clause 34 of the apartment buyers agreement is reproduced hereunder for the kind perusal of this Hon'ble Commission:-

"34. If the Owner or the Maintenance Agency decides to apply and thereafter receives permission, from Haryana Vidyut Prasaran Nigam Ltd.

or from any other body/Commission/Regulatory Authority constituted by the government of Haryana for such purpose, to receive and distribute bulk supply of electrical energy in the said Complex, then the Allottee(s) undertakes to pay on demand to the Owners proportionate share as determined by the Owner of all deposits and charges paid by the Owner or the maintenance agency to Haryana Vidyut Prasaran Nigam Ltd. or any other Body/ Commission/Regulatory Authority constituted by the Government of Haryana, failing which the same shall be treated as unpaid portion of the total price by the Allottee(s), for the said "Apartment" and the conveyance of the said "Apartment" shall be withheld by the Owner till full payment thereof is received by the Owner from the Allottee(s). "

Therefore on complete reading of the clause 34 it is very much clear that the respondent No.1 would receive and' distribute bulk supply to the petitioners who in return on the demand of the respondent No.1 would remain liable to pay proportionate electricity charges.

That it would not be out of place to mention here that as per clause 5 sub clause 'f' of the "Maintenance Agreement" the allottees / petitioners are at liberty to apply for individual/direct electricity supply connection from the Haryana State Electricity Board or any other body licensed for supply of electrical supply therefore, the prayer sought by way of present petition is nothing more than the misconception in the minds of the petitioners who rather than having applied by separate application before the Haryana State Electricity Board have indulged into forum shopping. Therefore, the present petition deserves to be dismissed with heavy costs. for the kind perusal of this Hon'ble Commission Clause 5 of the maintenance agreement is reproduced here under:-

“5.4 Electricity:

- a. As per applicable Rules and Regulations of the Haryana State Electricity Board (hereinafter referred to as "HSEB") Uttar Haryana Bijli Vitran Nigam (UHBVN), the Developer shall receive bulk supply of electrical energy in the project at single termination point from HSEB and distribute it to individual apartments/units of the Project and to the said Apartment/Unit. The Purchaser hereby specifically agrees to receive supply of electricity in the manner as mentioned above.

- b. All Electricity to be supplied to the Apartment/Unit shall be recorded on dual sub-meters provided in the Apartment/Unit. One part of the Sub-Meter shall be recording the consumption of the electricity units of HSEB and the other part of the sub-meter shall be for recording the power back up electrical units supplied through Generator Set, as installed by the Developer in the Project.
- c. The Purchaser shall pay for the electricity power consumption in the Apartment/Unit, as invoiced in accordance with the reading recorded in dual sub-meter along with (pro rata) meter hire charges along with applicable cess/charges/taxes within the time and manner stipulated for the said payment.
- d. The purchaser shall pay the electricity power consumption charges through the intelligent debit metering system installed by the developer, where the deposit keeps in reducing as per consumption. The Purchaser will be able to re-charge the deposit through the installed software and the Net Banking facility provided by Banks.
- e. The purchaser shall also pay proportionately charges for the power back up through Generator, which shall be calculated on the basis of prevailing market price of the diesel along with 20% additional cost towards the overhead charges within time.
- f. If the consumption falls below the minimum demand as per applicable scheduled tariff then the Purchaser shall also be liable to pay (on the pro-rata basis) the minimum demand charges. Further, the purchaser agrees to abide by all the conditions of sanctioned electricity supply, including but not limited to waiver of right to apply for individual /direct electricity supply connection from HSEB or any other body licensed for supply of electricity energy."

That it is evident that the petitioners being purchaser/allottee themselves have agreed to abide by all the conditions of the sanctioned electricity supply which in the present case is under bulk supply domestic category and the respondent No.1 is charging the petitioners under the same category according to the charges levied per unit by the UHBVN earlier the UHBVN was supplying electricity @ of Rs. 7.90 Per Unit However as on date the same is being supplied @ Rs 7.00/- per unit and the residents are also being charged @ Rs 7.00/- per unit

(which is subject to variation). Therefore, the answering respondent is charging the tariff accordingly from the other residents as well.

That another important aspect is that the order dated 03.12.2014 passed by this Hon'ble Commission which has been highly relied upon by the petitioners is not applicable to the facts and circumstances of the present case. As in the case relied upon by the petitioners there were no specific agreements/covenants governing the issue of charging of electricity consumption, but in the present case there has been two agreements entered between the petitioners and the respondent No.1 governing the matter pertaining to charging of electricity supply and both the "Apartment Buyers Agreement" as well as "Maintenance Agreement" have been minutely read by the petitioners before having given their consent. Therefore, now the petitioners cannot be allowed to make a summer salt as the petitioners have duly acknowledged each and every clause of the agreements and have thereafter signed the same.

That it would be worth mentioning that as on date there is an occupancy of about 600 families who are presently residing in the Multi Storied Residential Group Housing Colony built by the respondent No.1 and it is in public knowledge that the apartment owners have also formed a Resident Welfare Association but interestingly the Resident Welfare Association has not preferred to come forward seeking the same relief as is being sought by the petitioners which clearly shows that as such the residents are not being charged excessively as is being alleged by the petitioners who are only 8 in numbers and had it been that the residents were being charged excessively that the number of aggrieved residents would have increased and it is for this reason that the Resident Welfare Association has chosen not to come forward as all the residents are satisfied with development and maintenance and with the facilities provided by the respondent No.1.

That it would be pertinent to mention here that the respondent no.1 has installed dual sub meters in each and every apartment/unit of the Multi Storied Residential Group Housing Colony built by the respondent No.1 and one part of the sub meters records the consumption of electricity units consumed by the consumer and the other part of the sub meter records the reading which is recorded after there is a power cut or disconnection of supply from the end of HSEB and it is at this stage when the power back up/ generators instantly comes into operation automatically so that electricity supply is not disrupted.

That by way of present petition the petitioners are seeking that their electricity consumption should be charged as per the domestic supply category. However, this prayer is totally misconceived as once the answering respondent is receiving supply under Bulk Supply Domestic Category then the answering respondent cannot be asked to charge the petitioners under "Domestic Supply Category" as even the fixed charges of electricity per unit are different for both the Bulk Supply Domestic Category as well as Domestic Supply Category and once the respondent No.1 is receiving the supply under bulk supply domestic category it is deemed that the petitioners remain liable to pay proportionate share of electricity usage under the said category and in case they wish to shift to independent electricity connection under domestic supply category it is open for the petitioners to approach the HSEB or any other authority for installation of an independent electricity connection.

That it is also worth mentioning here that the entire process of charging under the domestic supply category cannot be initiated for the petitioners being 8 in number rather the consent of all the residents would be required and also the same is not viable as already so much of machinery, backup generator, dual sub meter are already in place and the answering respondent has employed special staff who are equipped with the software and maintain the record of the consumption of each and every apartment electricity consumption. That changing the entire infrastructure which already in place would result in loss to the residents as they will not be able to take avail the facility and benefit of the backup generator to have uninterrupted power supply. Even if the category of the connection is to be changed to domestic supply the expenditure which would have be incurred will have to be incurred by the residents themselves which ultimately would burden the residents.

That another important aspect of the matter is that the answering respondents have not even charged a single penny for installation of sub meter installed at the apartment of the residents whereas the other societies in the vicinity as well as Punjab have a practice of charging the cost of installation of sub meter at the apartments. Further the respondents are not even charging Minimum Meter Charges (MMC). That the respondent society also follows a practice of reconciling the bills and in case at the time of their settlement it is found that there is any difference in the tariff levied then in that case the amount so calculated is credited to the account of each flat owner towards their respective electricity recharge. As per UFMVN Tariff norms and regulations 4% rebate is

given to the respondents on account of 11 KV bulk Supply domestic category which also is passed on to the residents who are all part of the RWA.

Therefore, in view of the facts narrated above it is most respectfully prayed that the present petition be dismissed with heavy cost.

#### Petitioner's Comments on counter to Rejoinder

The Petitioner vide his filing dated 02.11.2018 file the reply to the counter to rejoinder by the Respondent No. 1 as submitted as under:

Following comments are offered in reply to the Respondent No. 1 on 13<sup>th</sup> Sep 2018 file counter reply to the rejoinder which are as follows:-

#### Detailed Comments on Counter to the Rejoinder.

The Hon'able Commission after having heard and considered Respondent No. 1 had passed interim order on 10<sup>th</sup> Oct 2017, which established merit in favor of petitioners. There was/is, therefore, no room for the reopening discussion on grounds for applicability of Regulation 5.5 on the present case.

Precedence of HERC Regulations over Apartment Buyers Agreement (ABA) and Maintenance Agreement. Counter to the rejoinder, unnecessarily, reopens debate about merits of the case which has already been established by the Hon'able Commission. All arguments in the counter to the rejoinder are built on contents of the ABA and Maintenance Agreement between Respondent No. 1 and petitioners. It is established in law that all contracts/agreements have to be within concerned legal frame work and also that in case any provision in an agreement or a contract which is violative of law of the land shall be null and void.

#### Para wise replies to the Counter to the Rejoinder.

- i) Para 1 to 5. Para 4 (b) (ii) above.
- ii) Para 6. Mr. Ritesh Kumar and Mr. Amit Batra were President and Vice President of Resident Welfare Association at the time of filling of petition.
- iii) Para 7. Factual.
- iv) Para 8. Violative of Regulation 5.5.

- v) Para 9. Infrastructure is in place for taking individual meter reading both for mains supply and generators supply. What is required to be done is only to apply correct tariff.
- vi) Para 10. All apartment owners have paid the quoted/settled price for flat brought. The developer cannot say that payment has not been done for electric meter or for any other fitment. Not charging minimum Meter charges (MMC) is violative of HERC regulation 5.5.

In view of aforesaid it is prayed that (Contempt proceedings be initiated against Respondent No. 1 for failing to implement Hon'able commission's interim order dated 10<sup>th</sup> October 2017 and Final orders on the petitions be issued.

Proceedings dated 14.12.2018

- (1) Sh Sunil Gagneja, on behalf of all the Petitioners, submitted as under:-
  - (a) With passing of HERC Interim Order dated 10<sup>th</sup> Oct 2018, merits of the case petition already stand settled.
  - (b) Since M/s Suncity Projects Pvt Ltd has failed to implement above mentioned interim order, petitioners submitted a rejoinder to the petition with prayer to initiate contempt proceedings against M/s Suncity.
  - (c) Final order directing M/s Suncity to implement the relevant HERC regulation and to also to refund excessive charges already levied upon the residents.
- (2) Advocate Sh Raghav Goel on behalf of M/s Suncity submitted as under:-
  - (a) That M/s Suncity is in talks with vendor of smart dual meters to upgrade the software so that bills in accordance with HERC regulation can be generated.
  - (b) M/s Suncity is not charging Minimum Maintenance Charges (MMC) in flats lying vacant.
  - (c) Current petition has been filed by only eight residents and Parikrama Residents Welfare Association who represents all residents is not a party to the petition.
- (3) The Petitioners further submitted that most of the arguments advanced by M/s Suncity relate to the merits of the case which are already settled. However, the Petitioners continue to be affected by wrong application of Tariff by Respondent M/S Suncity Projects in spite of the Commissions Interim Order dated 04.10.2017.

The Commission observes that M/s Suncity is already recording apartment wise electricity consumption, they should be able to raise the bills as per Regulation without much additional efforts. In any case, M/s Suncity should quantify time limit by which they shall start generating bills in accordance with HERC Regulations, further the HERC Regulations for Single Point Supply were notified in the year 2013 therefore, M/s Suncity should have got the proper billing system in place by this time positively.

The matter was again heard on 13.09.2018, as scheduled. Shri Sunil Gagneja on behalf of the petitioners submitted that while issuing the interim order dated 10.10.2017, the Hon'ble Commission had observed that the electricity charges are not being recovered by the developer from individual residents as per the HERC Regulations. However, the Respondent No. 1 i.e Suncity Project Pvt. Ltd. is not following the HERC (Single Point Supply) Regulations 2013 and still charging higher tariff from the petitioners. He requested for penal action against Respondent No. 1 under section 142 and 146 of Electricity Act 2003 for non compliance of the Commission's Orders and to direct the Respondent No. 1 to charge the electricity tariff strictly as per the HERC Regulations.

During the hearing, Shri Ragav Goel, Ld. Counsel for Respondent No 1 submitted the counter to the rejoinder filed by the petitioner. He submitted that the electricity charges are being recovered from the individuals as per the apartment buyers agreement. He submitted that the petitioner have been charged as per the charges being paid to the Respondent No 2 i.e. UHBVN and the benefit of 4% rebate is also being passed on to the petitioners.

Ms. Sonia Madan, Ld. Counsel for Respondent No 2 submitted that UHBVN is recovering the electricity charges from the Respondent No. 1 as per the HERC Single Point Regulations 2013. She submitted that UHBVN has nothing more to say in the instant case since the present dispute is between the petitioner and the Respondent No. 1.

The representative of the Petitioner requested to allow at-least 10 days time to respond to the counter to the rejoinder as filed by the Respondent No 1.

Acceding to the request of the petitioner, the matter has adjourned for next date of hearing.

The matter was heard on 13.09.2018, as scheduled.

Shri Sunil Gagneja on behalf of the petitioners submitted that while issuing the interim order dated 10.10.2017, the Hon'ble Commission had observed that the electricity charges are not being recovered by the developer from individual residents as per the HERC Regulations. However, the Respondent No. 1 i.e Suncity Project Pvt. Ltd. is not following the HERC (Single Point Supply) Regulations 2013 and still charging higher tariff from the petitioners. He requested for penal action against Respondent No. 1 under section 142 and 146 of Electricity Act 2003 for non compliance of the Commission's Orders and to direct the Respondent No. 1 to charge the electricity tariff strictly as per the HERC Regulations.

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Ms. Sonia Madan, Ld. Counsel for Respondent No 2 submitted that UHBVN is recovering the electricity charges from the Respondent No. 1 as per the HERC Single Point Regulations 2013. She submitted that UHBVN has nothing more to say in the instant case since the present dispute is between the petitioner and the Respondent No. 1.

The representative of the Petitioner requested to allow at-least 10 days time to respond to the counter to the rejoinder as filed by the Respondent No 1.

The Respondent No. 1 has submitted as under:

That electrical load and layout plan was duly approved by the competent authority of UHBVN. As per approval single point bulk supply (DS) was approved for the said group housing colony. Accordingly, interim load of 1.5 MW was released in November, 2015. The first electricity bill was raised by UHBVN in the month of January, 2016. An average unit rate of this bill was Rs.7.94 per unit. A copy of bill is attached.

That, it is further submitted that on the basis of aforesaid first bill, we were charging @Rs.7.90 per unit from the residents which has now been reduced to Rs.7 per unit and any extra amount charged from the residents has been refunded. It is nevertheless to mention here that the electricity connection is a single point bulk supply, as such, we are charging the tariff on actual basis and

the same is being paid to UHBVN. It is important to mention here that residents are not being charged on account of Minimum Monthly Charges (MMC), Fix Charges or any other charges. Moreover, the benefit of 4% rebate on 11 KV supply given to us, is also being extended to the residents.

We are using the prepaid metering system with dual feeding arrangement with latest configuration which can be monitored and managed with the centrally controlled monitor. We are not making any profit by supply of electricity to residents and charging the same tariff on actual basis which is being paid to UHBVN.

In a single point bulk supply, it is not possible to raise the bills at a different rates on the basis of consumption by each unit holder and it is the reason that the unit holders are being charged on the basis of average unit rate as per bill raised by UHBVN and said amount is not more than the rates/ tariff fixed by HERC for Single point bulk Domestic Supply.

We also want to add here that all other Group Housing Colonies which have obtained single point bulk supply connections are having the same billing practice and the billing software has been designed accordingly.

It is therefore, requested to allow us to continue with the current billing practice and if any modification/ clarification in the order dated 10.10.2017 is required, the same may please be also made.

The matter was finally heard on dated 14.12.2018, the Petitioner representative Sh. Sunil Gagneja reiterated his submission made in his rejoinder demanding strict action against the defaulting Respondent No. 1 for not compliance of the order of the Hon'ble Commission dated 10.10.2017 wherein, the Commission had rightly observed that the electricity charges are not being recovered by the developer from the individual residents as per the HERC Regulations.

The Counsel for Respondent No. 1 Sh. Raghav Goyal also reiterated the submission made by the Respondent earlier and requested that he may be allowed certain time to get the billing software upgraded so that the billing is done to individual residents and the other connections in the colony as per the Regulations.

Upon hearing the petitioners and the Respondents, the Commission directed them to make written submissions.

#### **4. The Commission's Analysis and Order**

The Commission has carefully perused the details of the case, submission made by the Petitioners as well as Respondents, the rejoinder, counter to reply to rejoinder by the Petitioner and the arguments put forth by the parties during the hearings in the matter. The fact as also admitted by the Respondent -1 that they are charging for the supply of electricity at a flat rate of Rs. 7.9 per kWh and no MMC is being levied leads to obvious conclusion that the Respondent – 1 is not charging for the electricity supplied as per the tariff order and SPS Regulation of the Commission in vogue.

The Respondent -1 should note that any other tariff/charge recovered by them in-violation of the Electricity Act, 2003 and the Regulation of the Commission thereto

It needs to be noted that Electricity Act, 2003 under which Regulation are framed and tariff order(s) issued is a comprehensive law. Hence, as for electricity matters are concerned notwithstanding any other law/contract the EA, 2003 shall prevail.

The Commission having observed as far the Respondent No. 1 in his counter reply to the rejoinder has submitted that the Petitioner being purchase /allottee themselves have agreed to abide by all the conditions of the sanctioned electricity supply which in the present case is under bulk supply domestic category and the respondent No. 1 is charging the petitioners under the same category according to the charges levied per unit by the UHBVNL earlier the UHBVNL was supplying electricity @ of Rs. 7.90 Per Unit however as on date the same is being supplied @ Rs. 7.00/- per unit and the residents are also being charged @ 7.00/- per unit (which is subject to variation). Therefore, the answering respondent is charging the tariff accordingly from the other residents as well.

The Commission held that above contention of the Respondent is not correct as the electricity is under regulatory regime and distribution business is a licensed activity. Even if the developer / RWA or the maintenance agency whosoever is the Single Point Supply holder and manage the distribution of the supply within the society or the developer complex, on behalf of the distribution licensee, has to necessarily apply / levy the tariff for the consumption of electricity by the individual consumer/ residents, more than the Tariff approved by the

Commission for the domestic category consumer as per its tariff Order for the relevant period in vogue included MMC.

### **Order**

1. In view of the above discussion/observation the Respondent No. 1 is therefore directed to charge the Petitioner for their individual consumption of electricity in their respective flats / dwelling strictly in accordance with the Regulation 5.5 of HERC (Single Point Supply to Employer's colonies Group Housing Societies and residential or Commercial –cum-residential complexes of developer) Regulations, 2013 and its amendment from time to time.
2. As far as Petitioner's prayer w.r.t. pass on the credits, incentive, discount, concession, and subsidy/ rebate applicable to DS Category consumers to the residents of the society is concerned, the rebate, concession/subsidy etc. if any with regard to single point supply concession if any given by the distribution licensee shall be available on the single point supply concession only which may be ultimately realized through the society accounts.
3. The Developer/ RWA may evolve its own mechanism for transparent accounting of income and expenditure account audit for electricity supply in the colony. The Licensee may not enter into internal matters/ RWS/Developers.
4. The Developers/RWA supplying electricity to the individual consumers in the society shall ensure that the meters installed at the individual residents/ dwellings are working within prescribed limits of accuracy. However, if any resident challenges the accuracy of the meter the same may be got tested through the distribution licensee in their M&T Laboratory after payment of the requisite fee. Further in case the meter accuracy is found incorrect the account of the consumer be over hauled as per standing instructions/ procedure laid down in the Electricity Supply code.
5. The Respondent shall also charge the Monthly Minimum Charges as approved by the Commission to the Consumers who are supplied with the electricity and not consuming it upto their MMC threshold.

The Respondent No. 1 is directed to issue the next bill for the consumption by the residents / consumer strictly as per the tariff chargeable to domestic category of consumers/the relevant category of

consumer as approved by the Commission and report compliance within 30 days of the issue of the Order along with the details as required by the Commission vide its earlier order dated 10.10.2017. In term of the above order, the case is disposed off.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 24.12.2018.

**Date: 24.12.2018**

**(Pravindra Singh Chauhan)**

**(Jagjeet Singh)**

**Place: Panchkula**

**Member**

**Chairman**

HERC