BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/P. No. 42 of 2022

Date of Hearing : 25.10.2024
Date of Order : 12.12.2024

IN THE MATTER OF:
Petition under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 ("Duty to Supply Regulations") and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 ("Supply Code") read with Section 142 and 146 of the Electricity Act, 2003.

Petitioner

Dakshin Haryana Bijli Vitran Nigam, Vidyut Sadan, Vidyut Nagar, Hisar, Haryana – 125005

Respondent:

M/s Vipul Limited; Vipul Tech Square, Golf Course Road, Sector-43, Gurugram through its Managing Director.

Present

On behalf of the Petitioner

1. Sh. Tushar Mathur, Advocate
2. Sh. Tarsem Rana, Associate to Advocate
3. Sh. Shreyas Shridhar, Advocate
4. Sh. Rajesh Kaushik, SDO, DHBVN

On behalf of the Respondent

Ms. Mehar Nagpal, Advocate

QUORUM

Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member

ORDER

1. **Background of the Petition:**

That the present petition was filed by Dakshin Haryana Bijli Vitran Nigam, Vidyut Sadan, Vidyut Nagar, Hisar, Haryana – 125005

The Petitioner above named, most respectfully submit as under:

SECTION I: CONSPECTUS OF THE PETITION.

A. Introduction.

1.1 The Petitioner is a State-owned Distribution Company and registered under the Companies Act, 1956, formed under corporatization / restructuring of erstwhile Haryana State Electricity Board (HSEB) and are responsible for the distribution and retail supply of electricity in the South Zone of the State of Haryana. The Petitioner amongst other general consumers of Haryana also cater to the areas developed by the Respondent Developers/Builders in southern part of the State of Haryana.

A.1. Sales Circular no. D-21/2020 – Embargo on Release of New Connections.

1.2 The Petitioner is constrained to file this petition and seek urgent relief(s) mentioned in the succeeding paragraphs to ameliorate the hardships faced by the owners/occupants of premises/units seeking new electricity connection/additional load etc. within projects/areas, where Respondent Developer has not installed adequate electrical infrastructure. The Petitioner faced with the conundrum of inadequate electrical infrastructure within said projects/areas, issued a Sales Circular no. D-21/2020 dated 07.09.2020 *inter alia* putting embargo on release of new connections.

1.3 The individual residents/applicants agitated their grievances before various platforms i.e. District Administration, Public Representative (s) and other grievance redressal forums including National Human Rights Commission as well as PM/CM Office. The issue had been highlighted in various newspapers.

A.2. PRO-55 of 2021 Filed by Petitioner before the Hon'ble Commission agitating the same issue

1.4 Prior to the filing of the present petition, the Petitioner had agitated this issue in PRO-55 of 2021 before the Hon'ble Commission in which all the Delinquent Developers were made parties. Vide order dated 02.02.2022, Hon'ble Commission was pleased to grant immediate relief to the distressed residents of the subject areas/projects developed by the Respondent Developers and permitted the Petitioner to release new electricity connections/additional load on voluntary payment of development charges mentioned in the Petition.

1.5 Pursuant to the Order dated 02.02.2022, DHBVN has already started releasing connections/ additional load for applicants of the subject areas/projects developed by the respondent developer who voluntarily opt to pay development charges.

1.6 Subsequently, it was argued by the Respondent/Delinquent Developers before the Hon'ble Commission that each builder's agreement is to be seen separately with the peculiar facts of the agreement.

1.7 Thus, the Hon'ble Commission vide order dated 18.05.2022 directed the Petitioner to file separate petitions regarding inadequacy of infrastructure in respect of each developer with all the relevant details.

1.8 Hence, the present Petition is being filed in compliance of the order dated 18.05.2022 passed by the Hon'ble Commission.

A.3. Relief(s)

1.9 Thus, the Petitioner is approaching this Hon'ble Commission with this petition *inter alia* for grant/issuance of:-

(a) Permit the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 65 to 67 herein below and in terms of the HERC Order dated 02.02.2022 passed in PRO 55 of 2021, from each of the prospective applicant(s) seeking new connections, consumers seeking grant of additional load or no objection (situated within the Projects), subject to adjustment/refund on curing deficiencies by the Respondent or payment of cost thereof (in any of the manner mentioned below), so as to grant immediate respite of granting connections/additional load to applicants/consumers within the Projects.

(b) Directions to the Respondent to, forthwith:-

(i) cure inadequacies within the above named Projects; or

(ii) pay a sum of money either:-

(1) in cash deposit equivalent to the cost of curing the aforesaid inadequacies; or

(2) by way of bank guarantee(s) of the cost of curing the aforesaid inadequacies to the Petitioner; and

(3) by way of transfer of an immovable property duly certified by DTCP to be of encumbrance free and of value equivalent to the cost of curing the aforesaid inadequacies.

(c) Ad-interim/interim permission to the Petitioner in terms of the clause (a) above during pendency of this Petition.

A.4. Formula for Computation of Development Charge(s).

1.10 The Petitioner has computed the above Development Charge(s) using the following formula: -

Development Charge (in rupees per KW per applicant/ consumer)	=	*[Cost of inadequacies of the Project (2019) /total ultimate load of prospective applicants in the Project] x ultimate load or applied load (which ever higher) of individual applicant/consumer.*

(Govt. Taxes /Duties, as applicable will also be levied on the above development charges)*

1.11 Applying the above formula, proposed Project wise Development Charge(s) computed for the deficient projects having multi point/ individual connections is annexed. These proposed charges would be applicable up to 31.03.2023 and would be enhanced by 10% every financial year thereafter. The new applicants of domestic category may be given an option to deposit proportionate 'development charge(s)' in lump sum or in 12 no. EMI (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four per cent) would be allowed to domestic applicants/consumers opting to deposit development charges in lump sum in one go.

The applicants of other than domestic categories would be required to deposit the proportionate development charges in one go before release of their connections as the load of other than DS categories would be quite higher and

would require immediate creation of infrastructure to release the same. The above development charges, so deposited by the applicants/consumers would be refunded afterwards subject to recoveries that would be made from defaulting developers. It is also worthwhile to mention here that inadequacy of infrastructure exist viz-a-viz the ultimate load requirements.

B. Background.

B.1. The Conundrum of Inadequate Electrical Infrastructure.

1.12 Many of the Developers/ Builders/ Delinquent Developers including the Respondent developers, that have developed projects within the Petitioner's license area, failed to install adequate electrical infrastructure to cater to the load as per the applicable load norms. This situation exists even after sale of units/premises in these projects/colonies.

All of the areas/ projects which constitute the subject matter of this Petition, which suffers from inadequate electrical infrastructure are hereinafter collectively referred to as "Projects".

1.13 The Petitioner has repeatedly called upon the Respondent Developers to install / complete the necessary and required electrical infrastructure and cure deficiencies / inadequacies. Despite thereof, they have completely failed to take any measures / necessary steps to cure deficiencies / inadequacies in their electrical infrastructure.

1.14 After sale of plots / dwelling units in the Projects, these areas are being currently maintained by concerned RWA / local residents.

B.2. Judicial Proceedings and Precedents on Inadequacy of Electrical Infrastructure.

1.15 In the aforesaid context, it is noteworthy that directions have been passed by this Hon'ble Commission to Ansal Build Well to cure the inadequacies in its Order dated 20.02.2015 passed in Case No. *HERC/PRO- 21 & 23 of 2013* titled as Ansal Build Well v. DHBVN & Ors. Despite this, Ansal Build Well has failed to install adequate electrical infrastructure. Ansal Build Well has challenged the said Order dated 20.02.2015 before the Hon'ble High Court of Punjab and Haryana in CWP No.6460/2015 and 6452/2015, which is pending adjudication. However, no stay has been granted by the Hon'ble High Court on the said Order.

1.16 Another writ petition CWP No.22637/2014, Sheetal International Pvt. Ltd. V. DHBVN &Ors. is also pending adjudication before the Hon'ble High Court *inter alia* on the issue of inadequacies.

1.17 A similar issue was agitated before the Hon'ble High Court in Sanjeev Vohra v. Director General Town and Country Planning and Ors., CWP No.25276/2016, wherein directions have been issued to DTCP to recover the costs from the colonizer and to deposit it with the Petitioner.

1.18 Recently, this Hon'ble Commission in its Order dated 09.08.2021 passed in Anandvilas 81 Resident Welfare Association v. DHBVNL, HERC/PRO-48/2020 held that: 'it is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers. *The petitioner society falls within the licensed area of M/s Country Wide developers and* approval of beneficial interest by DTCP does not absolve

them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers *for which the case is pending for adjudication (i.e. Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana."*

B.3. Consequence of Inadequate Electrical Infrastructure in Projects.

1.19 Lack of adequate electrical infrastructure has caused serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under:

(a) On one hand, under applicable provisions of the Electricity Act, 2003 read with the Duty to Supply Regulations and Supply Code, the Petitioner, in law, neither release new connections to the buyers of such premises nor sanction additional load to existing consumers owning such premises on account of existing deficiencies in installed electrical infrastructure.

(b) On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure.

Thus, the Petitioner cannot in law take over such deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity.

C. Legal and Regulatory Framework on the Issue.

C.1. Electricity Act, 2003

1.20 Section 46 of the Electricity Act, 2003, empowers the State Commission to frame regulations to authorise a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and electric plant are defined in Section 2 (20) and (22) of the Electricity Act, 2003.

C.2. Duty to Supply Regulations.

1.21 Regulation 4.1 of Duty to Supply Regulations empowers DHBVNL to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.6 of the Duty to Supply Regulations further provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer.

1.22 Regulation 3.10 read with Regulations 4.1 and 4.12 of the aforesaid regulations *inter alia* empower DHBVN to recover charges for extension of distribution system.

1.23 It emanates from these regulations that liability to bear cost of extending the distribution system etc. shall be borne by an applicant of a connection i.e. either the builder, who developed a project and/or consumer(s) within such projects.

C.3. Supply Code.

1.24 Further, in context of recovery of charges by a licensee, Section 50 of the Electricity Act, 2003 requires that the State Commission shall specify an electricity supply code to provide for recovery of these charges. Pursuant thereto, this Hon'ble Commission has framed the Supply Code. Provisions similar to what have been discussed in the preceding paragraphs, as contained in Duty to Supply Regulations exist in Supply Code.

1.25 Regulation 4.2.3 of the Supply Code provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any

strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by this Hon'ble Commission under Section 46 of the Electricity Act, 2003. This stipulation is exactly same as that of Regulation 4.6 of the Duty to Supply Regulation.

C.4. Builder's Agreement with DTCP.

1.26 Further, as elaborated in the succeeding paras the obligation of the builder/ developer to carry out the electrification work in his area also forms part of the Builder's agreement with DTCP.

C.5. Single Point Regulations

1.27 Second proviso to Regulation 6.1. (a) of Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020 ("Single Point Regulations") provides that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of Duty to Supply Regulations. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.

C.6. The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules").

1.28 M/s Ansal Buildwell have not submitted final Completion Certificate under Rule 16 of 1976 Rules. In fact, none of them have approached DHBVN for issuance of No Objection required for obtaining final Completion Certificate. In this context, it is noteworthy that:-

(a) Grant of 'completion certificate' to a developer by the DTCP under the 1975 Act signifies that the development of infrastructure works, including development/installation of electrical infrastructure has been completed by such developer as per the terms of the licence and the agreement entered into with DTCP, and as per the approved plans by the designated authorities.

(b) Non-grant of completion certificate by the DTCP signifies that the works in the colony developed by the developer are incomplete and its obligation under HRDUA Act, 1975 as well as the Electricity Act, 2003 and the Regulations framed there under has not been discharged.

(c) After completion of all works in a colony and grant of completion certificate by the DTCP, obligation of distribution licensee arises under the Duty to Supply Regulations to take over the electrical infrastructure in the area to maintain the same.

(d) DHBVN's Sales Circular No. D- 15/2010 dated 14.12.2010 after approval by the State Government stated that DHBVN will take over the electrical infrastructure in the area being developed by the developers after the same has been upgraded as per the new load norms. Thus, the stage of 'taking over' of the electrical infrastructure of an area by a distribution licensee arises when the entire work in such area is

complete and when final completion certificate has been granted by DTCP.

(e) However, if electrical infrastructure in an area is incomplete due to non-completion of work by its developer as per the prevalent load norms, the system cannot be taken over by DHBVN. Thus, consequences of such non-completion of work shall have to be borne by the concerned Respondent and/or the concerned consumers/applicants, more so because no completion certificate has been granted by DTCP.

1.29 Some of these Developers have though taken and submitted part completion certificate, this does not absolve such Developer from obtaining final Completion Certificate and its obligation to complete the required electrical infrastructure to cater to the ultimate load of the area developed as per the applicable Load Norms.

D. Conclusion.

1.30 Thus, the cost of installing adequate electrical infrastructure to cater the ultimate load, shall have to be borne by:-

(a) the Respondent, who has failed to erect adequate electrical infrastructure; and/or

(b) the consumers/applicant within the area(s) developed by the Respondent.

SECTION II: FACTUAL MATRIX

1.31 On 20.09.2013, the Petitioner issued a notice bearing memo no.12612/73 calling upon the Vipul Limited ("Vipul") to furnish cost or bank guarantee on account of inadequate electrical infrastructure in Respondent's projects/colonies. The Petitioner specifically highlighted various provisions of the Electricity Act, 2003, Regulations framed there under and conditions of license issued by the Directorate of Town and Country Planning.

1.32 On 24.12.2015, Director General, Town and Country Planning, Haryana, Chandigarh also issued a notice vide endst no. 25596 to Vipul demanding cost of deficient electrical infrastructure (inadequacy of Rs 11.62 Crores) or bank guarantee equivalent to 1.5 times the said cost in terms of the obligation of the Respondent under the bilateral agreement signed at the time of grant of license to arrange electric connection.

1.33 It is worthwhile to mention here that the demands of curing the inadequacy/BG in lieu thereof as mentioned in the notices issued by DHBVN in 2013 and by the DTCP in 2015 as per the foregoing paragraphs is based on the cost of inadequacy prevailing at that time. However, a Committee of Nigam's officers was constituted in 2019 to reassess the cost of inadequacies due to revision in load norms in 2017 as per Sale Circular D-16/2017 and accordingly the benefit of reduction in load norms has been extended to the aforesaid developers. Moreover, some of the developers have installed/created partial infrastructure in the intervening period. Due to these reasons, the costs of inadequacy have been reduced from 976.75 crores in 2013 to 317.96 crores in 2019 relating to 16 no. Builders.

1.34 Thus, immediate, and urgent directions are necessary to be issued by this Hon'ble Commission, to resolve this acute problem of existing deficient electrical infrastructure in the interests of all stake holders. Accordingly, this petition is being filed before this Hon'ble Commission.

1.35 It is submitted that the Respondent developer, for the reasons mentioned in the succeeding paragraphs are liable to cure these deficiencies.

SECTION III: LEGAL AND REGULATORY FRAMEWORK.

E. Obligation on Respondent Developers and Consumers to install adequate Electrical Infrastructure.

1.36 Developers are obliged in law as well as contractually (see bilateral agreement between DTCP and the concerned Developer) to install such electrical infrastructure as may be adequate to cater the 'ultimate load' within the area developed by them. However, most of these Developers despite repeated persistence by DHBVN have failed to cure the inadequacies. If these Delinquent Developers do not install such adequate electrical infrastructure, the cost thereof shall have to be borne by the consumers within the Projects developed by such developers. This position is emanating from interaction of the following laws:-

(a) The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules");
(b) Electricity Act, 2003;
(c) Duty to Supply Regulations;
(d) Supply Code; and
(e) Single Point Supply Regulations.

E.1. 1975 Act and 1976 Rules.

1.37 Respondent has submitted final Completion Certificate under Rule 16 of 1976 Rules. In fact, none of them have approached DHBVN for issuance of No Objection required for obtaining final Completion Certificate. In this context, it is noteworthy that:-

(a) Grant of 'completion certificate' to a developer by the DTCP under the 1975 Act signifies that the development of infrastructure works, including development/installation of electrical infrastructure has been completed by such developer as per the terms of the licence and the agreement entered into with DTCP, and as per the approved plans by the designated authorities.
(b) Non-grant of completion certificate by the DTCP signifies that the works in the colony developed by the developer are incomplete and its obligation under HRDUA Act, 1975 as well as the Electricity Act, 2003 and the Regulations framed thereunder has not been discharged.
(c) After completion of all works in a colony and grant of completion certificate by the DTCP, obligation of distribution licensee arises under the Duty to Supply Regulations to take over the electrical infrastructure in the area to maintain the same.
(d) DHBVN's Sales Circular No. D- 15/2010 dated 14.12.2010 after approval by the State Government stated that DHBVN will take over the electrical infrastructure in the area being developed by the developers after the same has been upgraded as per the new load norms. Thus, the stage of 'taking over' of the electrical infrastructure of an area by a distribution licensee arises when the entire work in such area is complete and when final completion certificate has been granted by DTCP.
(e) However, if electrical infrastructure in an area is incomplete due to non-completion of work by its developer as per the prevalent load norms, the system cannot be taken over by DHBVN. Thus, consequences of such non-completion of work shall have to be borne by the Respondent, more so because no completion certificate has been granted by DTCP.
(f) Under Electricity Act, 2003, an electricity connection under S. 43 can only be provided when infrastructure required for supply of electricity is adequate

to cater to the load of such consumer. Pertinently, proviso to S. 43 (1) of the Electricity Act, 2003 provides that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning is made. Thus, if the infrastructure required as per the peak load requirement of an area is inadequate and DHBVN releases new connections and provide electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose.

1.38 Although some of these Developers have taken and submitted part completion certificate, but this does not absolve the concerned Developer from obtaining final Completion Certificate and its obligation to complete the required electrical infrastructure to cater to the ultimate load of the area developed as per the applicable Load Norms.

E.2 Benefit of Revision in Load Norms.

1.39 In the meantime, Load Norms have been revised from to time and accordingly inadequacies in electrical infrastructure installed by these Delinquent Developers in their projects have been assessed. Benefits of revised Load Norms have been consistently given to these Developers. Thus, the assessed cost of curing these inadequacies has come down from Rs.976.75 Crores (in 2013) to Rs.317.96 Crores in (2019).

E.3. Judicial Precedents.

1.40 The above approach adopted by DHBVN has found resonance in HERC's Order dated 20.02.2015 passed in Case No. *HERC/PRO- 21 & 23 of 2013* titled as Ansal Build Well v. DHBVN &Ors. HERC, while passing the said Order framed a specific issue - *"Whether the electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if during the course of development by the developer/agency, the norms of calculating ultimate load are revised?".* While answering this issue, HERC *inter alia* analysed the provisions of Electricity Act, 2003, and HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2005 as well as the license granted by DTCP held that:-

"the developer is required to install the electrical infrastructure determined as per electrical layout plan approved by the Distribution Licensee in accordance with the applicable load norms during the course of development of the colony/Group Housing Societies/residential/non-residential areas *as per terms and conditions of the licence(s) granted by the Director, Town and Country Planning, Haryana and Agreement entered there under as well as the provision of the Single Point Supply Regulations, 2013."*

(Emphasis supplied)

1.41 Ansal Build Well challenged the said Order dated 20.02.2015 before the Hon'ble High Court of Punjab and Haryana in CWP No.6460/2015 and 6452/2015, which are pending adjudication. However, no stay has been granted by the Hon'ble High Court on the said Order.

1.42 Pertinently, Ansal Properties and Infrastructure Ltd. had also filed a writ petition titled as Ansal Properties and Infrastructure Ltd. v. State of Haryana, CWP No.2467/2013 inter alia challenging its obligation to erect/bear cost of required electrical infrastructure. This writ petition was dismissed as withdrawn by the Hon'ble High Court on 19.07.2017.

1.43 A similar issue was agitated before the Hon'ble High Court in Sanjeev Vohra v. Director General Town and Country Planning and Ors., CWP No.25276/2016. The Hon'ble High Court on 23.09.2019 disposed of the said writ petition with following directions:-

" *7. For the above reasons, the petition is partially allowed and the direction is issued to the Respondent No.2 and 3, whichever of them owes the responsibility to inform the Director General, Town and Country Planning, Haryana in writing to recover the costs from the colonizer and to deposit it with the Nigam's in terms of the agreement dated 29.03.2007. The Power Nigam's will inform Respondent No.1/Director General, Town & Country Planning, Haryana by letter in writing of its decision within 15 days and thereafter, competent authority i.e. the Respondent No.1 will take a final decision as enjoined by law within next one month sorting out the dispute and immediately thereafter convey the same to the colonizer and the petitioner.* "

1.44 The issue of inadequacy in electrical infrastructure installed by a private developer of Faridabad was recently dealt with by the HERC in Anandvilas 81 Resident Welfare Association v. DHBVNL, HERC/PRO-48/2020. HERC by its Order dated 09.08.2021 disposed of this petition and held that:-

"6.2 .. Commission, upon hearing the parties at length in the matter, observes that as per the mandate of the relevant Regulations in vogue it is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers. *The petitioner society falls within the licensed area of M/s Country Wide developers and* approval of beneficial interest by DTCP does not absolve them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers *for which the case is pending for adjudication (i.e. Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana."*

(Emphasis Supplied)

1.45 In context of grant of electricity connection in areas where there exist electrical inadequacies this Hon'ble Commission in Case No. HERC/PRO-68/2020, Confederation of Real Estate Developers Association of India – Haryana (Credai-HR) v. DHBVNL held as under:

"8. The Commission has carefully examined the contents of the petition, submissions made, arguments placed before the commission during the hearings. The Commission observes that the provisions of the sales circulars which are in contravention of the provisions of the Regulations causing undue hurdle and oppress the right of any genuine consumers should not be the part of any guideline/sales circulars issued by the Licensee, on the other hand the Act/Regulations also cast duty upon the Licensee to ensure the adequate infrastructure and services to consumer at reasonable cost is provided and to take appropriate measures to deal with defaulting developer/consumer to ensure the recovery of legitimate dues/inadequacy if any in past from such defaulter. *A list of 36 developers of only one circle i.e. OP Circle Sonepat submitted by the Respondents, reflecting continuous defaults made by the Developers/ Builders/ Colonizers for the creation of the* requisite infrastructure, reveals that the electrical infrastructure had not been created

even after the lapse of several years*; even the temporary connection which is essentially meant for the limited purpose of undertaking the construction activities has also been used to provide the supply of electricity to regular connections on inhabitants.* If the temporary connection is allowed without processing/approved electrification plan, the developer may not be obligated to lay down any electrification infrastructure as seen in the past since the Developers are not coming to create infrastructure even the lapse of 10 to 14 years. *Keeping in view of the judgment of Hon'ble Bombay High Court mentioned in para No. 3 above,* the electricity connection should not be released to any developer/ colonizer or subsidiary or sister concern/ partnership firm thereof against whom there are outstanding dues to discourage dodgy practices by allowing developer to form a different corporate entity with similar shareholding/ management and get away with the legitimate payment of dues, *despite the fact that the usual person behind both the legal entities would be the same. Therefore, the Commission is of considered opinion that the ibid five challenged clauses of the above said Circulars have been added by the Respondents as deterrent with the intent to curtail the defaults by the Developers in the interest of consumers, and to ensure that adequate electrical infrastructure is laid down and time limit so fixed is essential to be implemented to have quality of supply to the residents of the township developed by the Developer. As such Commission finds no merit in the petition."*

E.4. Electricity Act, 2003

1.46 For the purpose of the present analysis, following provisions of the Electricity Act, 2003 are relevant:

"Section 43. (Duty to supply on request):
Section 45. (Power to recover charges):
Section 46. (Power to recover expenditure):

1.47 Section 46 of the Electricity Act, 2003 empowers State Commission to frame regulations to authorise a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

1.48 Section 2 (20) of the Electricity Act, 2003 defines electric line to mean *"any line which is used for carrying electricity for any purpose and includes'*

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity;"

1.49 Section 2 (22) of the Electricity Act, 2003 defines electrical plant to mean "any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-

(a) an electric line; or
(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
(c) an electrical equipment, apparatus or appliance under the control of a consumer;"

1.50 Pursuant to the above and in exercise of its powers under Section 181 of the Electricity Act, 2003, HERC framed Supply Code and Duty to Supply Regulations.

E.5. Duty to Supply Regulations.

1.51 In exercise of powers conferred under sub-section 2 (t, v) of section 181 read with sections 43, 46 & 47 of the Electricity Act, 2003, HERC notified the Duty to Supply Regulations, 2016, as amended from time to time, to enable a Distribution Licensee to recover the expenditure under Regulation 4.

1.52 The Regulation 4.12.2 was inserted into Duty to Supply Regulations, 2016 by way of an amendment notified on 19.03.2020.

E.6. Supply Code.

1.53 In exercise of the powers conferred by Section 50 and clause (x) of sub-section (2) of Section 181 of the Electricity Act, 2003 and all other powers enabling it in this behalf, the HERC notified the Electricity Supply Code Regulations, 2014 to deal with the procedure for connection, disconnection, reconnection, assessment of load, changes in existing connections including load modifications, change of name and change of tariff category.

E.7. Single Point Supply Regulations

1.54 Second proviso to Regulation 6.1. (a) of Single Point Regulations provides that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of Duty to Supply Regulations. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.

E.8. Bilateral Agreement between Director General, Town and Country Planning, Haryana, (DTCP) and Builders.

1.55 Pertinently the Bilateral Agreements signed by the builders/ colonizers with DTCP at the time of grant of license also mandates a condition that the builders are required to arrange electric connection for the area developed by them. The relevant condition of the bilateral agreement reads as under:

"The colonizer will arrange the electric connection from outside source for electrification of their colony from HVPN. If they fail to provide electric connection from HVPN the Director, Town and Country Planning will recover the cost from the colonizer and deposit it with HVPN. However, the installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall remain the responsibility of the colonizer for which the colonizer will be required to get the 'electrical (distribution) service plan/ estimate' approved from the agency responsible for installation of external electrical services i.e. HVPNL/ UHBVNL / DHBVNL, Haryana and complete the same before obtaining completion certificate for the colony."

1.56 Thus, it emanates that the obligation of the builder/ developer to carry out the electrification work in his area also forms part of the Builder's agreement with DTCP.

1.57 However, despite issuance of several demand notices time and again as stated in the preceding paragraphs, the Respondent failed to install adequate electrical infrastructure, thus as violated the aforesaid provisions of the Electricity Act, 2003 read with the regulations above mentioned as well as the their Agreement with DTCP.

F. Liability to bear the Cost of Curing the Inadequacies is of both Developer and Applicants of New Connections/Additional Load etc.

1.58 It emanates from the above regulations that liability to bear cost of extending the distribution system etc. shall be borne by either the builder, who developed a project and/or applicants/consumer(s) within such projects.

Section IV: Need of the Hour to Provide Urgent Relief in light of Notifications issued by the EPCA

1.59 Lack of adequate electrical infrastructure has caused serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under:-

(a) On one hand, under applicable provisions of the Electricity Act, 2003 read with the Duty to Supply Regulations and Supply Code, the Petitioner cannot, in law either release new connections to the buyers of such premises or sanction additional load to existing consumers owning such premises on account of existing deficiencies in installed electrical infrastructure.

(b) On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure.

Thus, the Petitioner cannot in law take over such deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity.

1.60 Although, the Hon'ble Commission vide its order dated 02.02.2022 has provided ad-interim relief in form of release of new connections to the applicants on voluntary payment of Development Charges, but as noted by the Commission, the money due towards inadequacies is to be recovered from the Delinquent Developers and the money received as Development charges has to be adjusted/refunded. The voluntary payment of development charges only provides respite to the consumers with the ability to incur such expenses, the other consumers who are unable to bear such expenses still have to be provided relief.

1.61 The issue of inadequacy in infrastructure, attains a sense of urgency particularly on account of use of DG sets and their impact on the health of the environment, especially in colonies / buildings including that of the Respondent where these DG sets have been installed by colonizers / developers, as stop gap arrangement, between installing the required necessary infrastructure and meeting consumer demand on the other. In this context, the following facts are noteworthy:

(a) Environment Pollution (Prevention and Control) Authority for National Capital Region ("EPCA") issued Notification No. EPCA-R/2019/L-42 dated 09.10.2019 that banned use of DG Sets last year with effect from 12.10.2019. The said notification was issued by the EPCA considering drop in air quality in the NCR during winters ("2019 Notification").

(b) In 2020, EPCA had again issued Notification No. EPCA-R/2020/L-38 dated 08.10.2020 banning use of DG Sets in Faridabad and Gurugram with effect from 15.10.2020 ("2020 Notification").

(c) The Secretary to Govt. of Haryana, Department of Environment and Climate Change, vide its Memo No. 1/2021 dated 02.12.2021 has inter-alia enforced a complete ban on the operation of all DG sets in NCR districts of Haryana including Gurugram due to which difficulty is being faced by the residents in these area in constructing their houses/residing

in already constructed house due to non-availability of electricity connections/power supply.

1.62 As mentioned above, though some directions/orders have been passed by this Hon'ble Commission as well as the Hon'ble High Court, the issue of inadequacies in electrical infrastructure has remained unresolved. Considering this aspect of the matter also, addressing the issue of continuing inadequacies in the electrical infrastructure especially in Gurugram, is critical and require urgent and immediate attention.

1.63 On 06.06.2022, the Petitioner issued revised calculation towards bank guarantee to the Respondent. On 28.06.2022, the Petitioner issued a memo calculation of bank guarantee was given to the Respondent as tentative along with chart evidencing such calculation. Copy of the letters dated 06.06.2022 and 28.06.2022 are annexed.

1.64 08.07.2022, the Respondent issued a letter to the Petitioner wherein Respondent showed willingness to submit Rs. 8.08 crores towards inadequacy. Copy of the letter dated 08.07.2022 is annexed.

1.65 Thus, the Petitioner has filed this Petition with *bona fides* and in the interest of justice for kind consideration of this Hon'ble Commission.

Section V. The Development Charges

1.66 The Petitioner has computed the above Development Charge(s) using the following formula:-

Development Charge (in rupees per KW per applicant/ consumer)	=	*[Cost of inadequacies of the Project (2019) total ultimate load of prospective applicants in the Project] x ultimate load or applied load (which ever higher) of individual applicant/consumer.*

(Govt. Taxes /Duties, as applicable will also be levied on the above development charges)*

1.67 Applying the above formula, proposed Project wise Development Charge(s) computed for the deficient projects having multi point/ individual connections have already been annexed. It is submitted that the charges are proposed to be applicable up to 31.03.2023 and be enhanced by 10% every financial year thereafter. The new applicants of domestic category may kindly be given an option to deposit proportionate 'development charge(s)' in lump sum or in 12 no. EMI (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four per cent) would be allowed to domestic applicants/consumers opting to deposit development charges in lump sum in one go.

1.68 The applicants of other than domestic categories would be required to deposit the proportionate development charges in one go before release of their connections as the load of other than DS categories would be quite higher and would require immediate creation of infrastructure to release the same. The above development charges, so deposited by the applicants/consumers would be refunded afterwards subject to recoveries that would be made from defaulting developers. It is also worthwhile to mention here that there are 32 no. projects of these Delinquent Developers where single point connections have been taken from the Nigam but inadequacy of infrastructure exist viz-a-viz the ultimate load requirements.

Prayer

1.69 In view of the above, it is most respectfully prayed that this Hon'ble Commission may be pleased to:-

(a) Permit the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 65 to 67of this Petition and in terms of HERC Order dated 02.02.2022 passed in PRO No. 55 of 2021, from each of the prospective applicant(s) seeking new connections, consumers seeking grant of additional load or no objection (situated within the Projects), subject to adjustment/refund on curing deficiencies by the Delinquent Developers or payment of cost thereof (in any of the manner mentioned below), so as to grant immediate respite of granting connections/additional load to applicants/consumers within the Projects in any of the manner mentioned, or any other manner as this Hon'ble Commission may deems fit and proper.

(b) Issue directions to the Delinquent Developers to, forthwith:-

(i) cure inadequacies within the above named Projects; or

(ii) pay a sum of money either:-

(1) in cash deposit equivalent to the cost of curing the aforesaid inadequacies; or

(2) by way of bank guarantee(s) equivalent to 1.5 times of the cost of curing the aforesaid inadequacies to the Petitioner; and

(3) by way of transfer of an immovable property duly certified by DTCP to be of encumbrance free and of value equivalent to the cost of curing the aforesaid inadequacies.

(d) Grant ad-interim/interim permission to the Petitioner in terms of the clause (b) above during pendency of this Petition.

(e) Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondent and punish each of the persons in-charge of Respondent';s affairs with appropriate imprisonment and/or fine under Section 146 of the Electricity Act, 2003, as this Hon'ble Commission may deem fit; and

(f) Pass any other order or order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.

LOAD detail/ Assessment of Infrastruture of Vipul

B-3

Sr. No.	Name of Connection	Account No.	New A/C No.	Total Sanctioned Load as per record (in KVA)	Total Ultimate load of builder/develo per (in KVA)	Total Installed Capacity as verified by Sub-Committe e (in KVA)	Ultimate Capacity required to be installed as per DHBVN norms (80% loading position of T/Fs) (in KVA)	Total Internal Inadequac y in terms of distribution network. (in KVA)	Total Internal Inadequac y in terms of distribution network (in KW)	Obligation to construct the substation taking individual license as separate identity and DHBVN norms (in Nos.)		Amount of Internal Inadequacy (in Rs Cr.)	Amount of External Inadequacy (in Rs Cr.)	HVPN Share cost of SubStn. to be borne buy the builder/developer (in Rs Cr.)	Total Amount of Inadequacy to be borne by the builder/developer (in Rs Cr.)	Amount of Bank Guarantee @ 1.5 times of total Amount of Inadequacy to be borne by the builder/develo per (in Rs Cr.)
										66 KV Sub-Stn.	33 KV Sub-Stn.					
1	Orchid Infrast (P) Ltd.	IND6-0001	6886170000	2265	1653.33	3000	2317	0	0.00	0	0	0.00	0.00	0.00	0.00	0.00
2	Vipul Infra - Orchid Petal (Approved On 33 KV Level)	IND6-0021	4223960000	10925	11503.13	7500	14378.91	6878.91	6191.02	0	0	3.30	0.00	0.12	3.42	5.13
2	Orchid Belmounce	BSG6-0039	3420660000	2544	2992.22	3500	3740	240.26	216.25	0	0	0.12	0.00	0.09	0.21	0.32
4	Maxworth (Vipul Green)	BPHO-0013	6307821000	5933	5668.59	5700	7085.74	1385.74	1247.17	0	1	0.65	3.34	0.36	4.35	6.53
5	Taiwan Villa (Part of Vipul World)	Part of Vipul World	1859821000	Part of Vipul World	13043.32	17200	16304.14	6926.00	6233.40	0	1	2.76	5.16	2.72	10.64	15.96
	Vipul World		Plotted													0.00
6	Inderprastha	BP4H-0039	3135821000	2650	2731.49	3500	3414.37	0.00	0.00	0	0	0.00	0	0.01	0.01	0.01
	G.Total			22318	37792.08	40400	47240.16	14430.93	12987.84	0	2	6.83	8.50	3.30	18.63	27.95

2. The case was heard on 07.09.2022, Ms. Meher Nagpal, counsel appearing for the respondent, requested for granting two weeks' time to file the reply in the matter as they have not received the copy of the petition. The Commission expresses its displeasure that the petitioner DHBVN has not timely supplied the copy of petition to the respondent as directed in its interim order dated 13.07.2022, in PRO-55 of 2021. The Commission has taken a serious note of the same. The Commission acceding to her request, allows respondent to file the reply within two weeks.
3. The case was heard on 29.09.2022, Ms. Nitika Sharma, counsel appearing for the respondent, requested for a short time to file the reply in the matter, as the reply could not be submitted due to an inadvertent error in noting the date of hearing. Sh.Sahil Sood counsel, appearing for the petitioner submitted that they have placed additional documents by filing Interlocutory Application (IA) in this petition, which may be taken on record. The Commission acceding to the request of the parties, directs the petitioner to handover the copy of IA to the respondent today itself and the respondent to file its reply to the main petition as well as the said IA within two weeks, with an advance copy to the petitioner. The petitioner shall file the rejoinder, if any, within one week thereafter.

4. The petitioner filed IA in the matter and submitted as under:
   4.1. That original Petition has been filed by the Petitioner under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 ("Duty to Supply Regulations") and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 ("Supply Code") read with Section 142 and 146 of the Electricity Act, 2003, against the Respondent Builder seeking *inter alia* following directions:-

   (a) Permit the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 65 to 67 of this Petition and in terms of HERC Order dated 02.02.2022 passed in PRO No. 55 of 2021 , from each of the prospective applicant(s) seeking new connections, consumers seeking grant of additional load or no objection (situated within the Projects), subject to adjustment/ refund on curing deficiencies by the Delinquent Developers or payment of cost thereof (in any of the manner mentioned below), so as to grant immediate respite of granting connections/ additional load to applicants/ consumers within the Projects in any of the manner mentioned in ***Annexure P-3****, or any other manner as this Hon'ble Commission may deems fit and proper.*

   (b) Issue directions to the Delinquent Developers to, forthwith:-

   (i) cure inadequacies within the above named Projects; or

   (ii) pay a sum of money either:-

   (1) in cash deposit equivalent to the cost of curing the aforesaid inadequacies; or

   (2) by way of bank guarantee(s) equivalent to 1.5 times of the cost of curing the aforesaid inadequacies to the Petitioner; and

(3) *by way of transfer of an immovable property duly certified by DTCP to be of encumbrance free and of value equivalent to the cost of curing the aforesaid inadequacies.*

(c) *Grant ad-interim/interim permission to the Petitioner in terms of the clause (b) above during pendency of this Petition.*

(d) *Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondent and punish each of the persons in-charge of Respondent affairs with appropriate imprisonment and/or fine under Section 146 of the Electricity Act, 2003, as this Hon'ble Commission may deem fit; and*

(e) *Pass any other order or order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.*

4.2. It is submitted that the present petition has been put in defects by Hon'ble Commission. It is submitted that the Petitioner is seeking amendment to the original petition only to the extent as follows:-

a. On 17.05.2022, Petitioner has issued a revised the demand for bank guarantee in respect of project of Respondent Builder. Inadequacy of above mentioned five projects of Respondent Builder are as follows:-

I. M/s Maxworth Marketing is of Rs. 435.36 crores,
II. Vipul Infra is of Rs. 341.82 crores,
III. Vipul World/Tayam is of Rs. 1063.37 crores,
IV. M/s Indraprstha is of Rs 1.70 crores and
V. M/s Orchid Belmonte is of Rs. 20.53 crores

Therefore, total amount is of Rs. 1862.78 lacs. It was requested the Respondent Builder to create 2 No. 33 KV sub stations for Maxworth Project and Vipul World Project for which the land of size 1250 Sq. Yards for each sub station is to be provided by Respondent Builder. Copy of the memo dated 17.05.2022 is annexed to the original petition.

b. On 28.06.2022, Petitioner issued another memo to Respondent Builder wherein in response to representation by Developer dated 06.06.2022, a meeting was held with DHBVNL senior officers on 22.06.2022 and it was decided to prepare BG Notices project wise. Copy of the memo dated 28.06.2022 is annexed to the original petition.

c. On 06.06.2022, Respondent Builder/Vipul Limited has sent a notice seeking revision in bank guarantee, wherein project wise status was given to Petitioner which includes Maxworth Marketing Pvt. Ltd, Sector 48, Gurugram (Vipul Green Residential Complex), Vipul Infra (Orchid Petal), Vipul World/Tatyam, Indraprastha Commercial Complex ad Orchid Belmonte, Sector 53, Gurugram. Copy of the notice dated 06.06.2022 is annexed to the original petition.

d. On 08.07.2022, Petitioner has issued a memo to Respondent Builder wherein review of inadequacy of five projects mentioned above were discussed and it was requested to Respondent Builder for providing details of projects. Copy of the memo dated 08.07.2022 is annexed to the original petition**.**

4.3. It is submitted that the Petitioner is seeking amendment only to the extent of attaching letters/memo/ notices mentioned above which is a recent development in the captioned matter. It is submitted that the present amendment is not changing the relief sought by the Petitioner.

4.4. It is submitted that above mentioned document is necessary for proper adjudication of the abovementioned Petition and it will also have a bearing on the present case. In the above-stated facts and circumstances, it is submitted that irreparable loss and grave prejudice will be caused to the petitioner if the present application of amendment is not allowed.

4.5. It is most humbly stated that the balance of convenience is also in favour of the Petitioner. It is thus in the interest of justice the present application shall be allowed.

4.6. It is submitted that the present application is being filed bonafide and in the interest of justice.

PRAYER

It, is therefore, prayed that your Lordships may graciously be pleased to:

a. Allow the present application,
b. Permit the Petitioner to amend the original petition to the extent prayed herein,
c. Pass any other order/orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case as well as in the interests of justice.

5. The case was heard on 10.11.2022, Ms. Meher Nagpal, counsel for the respondent, sought additional time to file the reply, as there are some discrepancies with respect to the facts, to be clarified by their client/ developer. The counsel for the petitioner did not raise any objection to the same. Acceding to her request, the Commission grants three weeks' time to the respondent to file the reply with an advance copy to the petitioner. Further, the petitioner may file rejoinder, if any, within two weeks thereafter.
6. The case was heard on 19.01.2023, Sh. Aashish Chopra, counsel for respondent prays for adjournment on the ground that he has to appear on 08.02.2023 in a similar matter and accordingly, the present matter be listed on 08.02.2023, the same is allowed. The counsel for respondent has further submitted that in the meanwhile the reply in the instant matter will be filed. Accordingly, the respondent is allowed to file reply within a week with an advance copy to the petitioner. The petitioner is granted one week thereafter to file rejoinder, if any.
7. The case was heard on 08.02.2023, Sh. Aashish Chopra, counsel appearing for the respondent, requested for two weeks' time to file reply. The counsel for the petitioner also requested for two weeks' time to file a rejoinder thereafter. The Commission acceding to his request, allows respondent to file the reply within two weeks with an advance copy to the petitioner. Further, the petitioner may file the rejoinder, if any, within two weeks thereafter.
8. The case was heard on 22.03.2023, Ms. Mehar Nagpal, counsel appearing for the respondent, requested additional two weeks' time to file the reply in this matter. The Commission acceding to her request, allows the respondent to file the reply within two weeks with an advance copy to the petitioner. Further, the petitioner may file the rejoinder, if any, within two weeks thereafter.
9. The case was heard on 03.05.2023, Ms. Mehar Nagpal, counsel appearing for the respondent, submitted that the reply is prepared but yet to be signed by the client. She further submitted that complete reply will be filed by tomorrow. The Commission

acceding to her request, directs the respondent to file the reply by tomorrow. Further, the petitioner may file the rejoinder, if any, within 15 days thereof with a copy to the respondent.

10. **Reply of Respondent Developer received on 04/05/2023**

The respondent-developer submitted following reply to the petition in shape of an affidavit:

10.1. That I am the Authorized Representative of Vipul Limited in the above matter and I have been duly authorized by virtue of Board Resolution dated 01.11.2021 to make this affidavit. A Copy of Board Resolution dated 01.11.2021 is annexed.

10.2. That gravamen of the petition is that the Vipul's Projects, reference whereof finds mention in Annexure P-12 of the petition, suffer from inadequate electrical infrastructure and it is on that count that demands for curing the inadequacy/bank guarantee in lieu thereof, has been sought through the notices issued by Dakshin Haryana Bijli Vitran Nigam Ltd. ('DHBVN'), the Petitioner herein.

10.3. That it would be relevant to state here that despite various communications/letters/e-mails and meetings between Petitioner and Respondent, Petitioner has failed to take into consideration pertinent issues/grievances arising out of demand notices issued by the Petitioner, which are not only arbitrary, while even delineating incorrect/wrong calculations, but also wreak of discrepancies, as the same wrongly enlists certain Projects as being developed by Respondent which are in fact being developed by a third party to the Petition, namely, Orchid Infrastructure and Developers (P) Ltd (hereinafter referred to as **'OIDPL'**).

10.4. That it is humbly submitted, to put facts in right perspective, the Projects enlisted in the table annexed as Annexure P-12 to the captioned Petition at serial numbers '1' and '2', that is, Orchid Infrast (P) Ltd. (though the correct and full name of the Project would be Orchid Infrastructure (P) Ltd.) and Vipul Infra- Orchid Petal, respectively, have been stated/shown to be the Projects being developed by the Respondent, which would be an erroneous projection. It is a matter of fact that Respondent and OIDPL had been jointly pooling in their energies and resources for procurement/acquisition, development, promotion and sale of various real estate projects. However, on account of various differences between them and failed attempts to amicably resolve these irreconcilable differences, Respondent and OIDPL had executed a Memorandum of Understanding dated 30.09.2005 (hereinafter referred to as 'MoU'), a Copy whereof is annexed, wherein the parties had consequently come to terms that they would not be able to continue to work together and had unanimously, in the interest of both the parties, agreed to amicably split the Projects by mutual understanding, more so when the same would enable both the Parties to independently undertake and execute ongoing projects and those which were yet to be developed.

10.5. That the said MoU states clearly that it has been mutually agreed that the projects allotted to OIDPL shall henceforth be managed, sold, marketed, advertised, promoted and developed by OIDPL independently and projects allocated to Respondent shall be henceforth managed, sold, marketed,

advertised, promoted and developed by Respondent indecently. The parties undertook to construct, develop, market and sell the Projects allocated to them independently. It was admitted and acknowledged by both the parties that none of them shall interfere in any manner in the execution of projects exclusively allocated to individual party in the MoU.

10.6. That, as agreed in the MoU, the projects at serial number '1' and '2', that is, Orchid Infrast (P) Ltd. and Vipul Infra- Orchid Petal enlisted in the table annexed as Annexure P-12 to the captioned Petition, which have been referred to in the MoU by their erstwhile names (hereinafter referred to as 'the other projects'), are to be marketed, advertised, promoted and developed by OIDPL independently and any responsibility/ liability arising out of said projects are solely the concern of OIDPL and the Respondent has no concern whatsoever with the said projects, much less, any responsibility/liability towards the said projects.

10.7. That the parties had also executed General Power of Attorneys in favour of nominee(s) of the concerned party with regard to the other projects specifically allocated to a particular party and it was decided that all documents with regard to particular projects shall be handed over to the party to whom such project has been allocated. Also, it would not be out of place to mention here that a Public Notice dated 30.11.2007, published in Times of India, annexed, was issued by Respondent to inform the general public that an amicable settlement had been reached between Respondent and OIDPL and consequently there has been splitting of projects between them. It was also stated that liabilities/ responsibilities arising out of such projects were to be met independently by the party to whom such Project has been allotted as a result of the settlement and was not to be taken up jointly.

10.8. That on perusal of the said MoU, it would be clear that the other projects, enlisted in the table annexed as Annexure P-12 to the captioned Petition, are solely under the control of OIDPL and Respondent has no concern whatsoever with responsibilities/liabilities arising out of such projects, which were allocated to OIDPL on execution of the MoU. Inadequacies, if any, in the electrical infrastructure in those other projects, are to be dealt by OIDPL and not Respondent and any demand notice issued by Petitioner to the Respondent in regard to such other projects, are erroneous as the same are not the responsibility/liability of the Respondent. Even despite several clarifications given by Respondent on various occasions, the Petitioner has failed to take notice of the fact that the other projects, allocated to OIDPL, are being managed, sold, marketed, advertised, promoted and developed by OIDPL independently since 01.10.2005 and still has been erroneously issuing demand notices reflecting inadequacies in the Projects which are not even being developed by Respondent.

10.9. That, further, even Notice dated 06.09.2013, issued cursorily by the Petitioner to the Respondent, annexed with the Petition as Annexure P-10, incorrectly enumerates/suggests certain projects as being developed by Respondent, which in fact are being developed and promoted by OIDPL, reflecting glaring negligence on part of Petitioner. It is submitted that Respondent has no liability/ responsibility towards the projects which are solely under the reins

of OIDPL. A chart depicting the name of the Projects as against their respective connection numbers, as mentioned in the said notice, vis-à-vis their respective developers, is being annexed, for clarity.

10.10. That as far as Project listed at Serial no.3 in the table annexed as Annexure P-12 to the captioned Petition, namely, 'Orchid Belmonte', is concerned, it is submitted that a sanction of 2544 KW with CD 2800 KVA on 11KV supply with applicable ILT/Indl. Tariff by Chief Engineer- Operation, DHBVN, Gurugram was granted to Respondent vide Memo no.Ch-4/WO/DRG/1314/GGN/04-05 dated 01.12.2005 and consequently on compliance by Respondent with the conditions enlisted in the said memo, electricity connection was released for the said Project, being developed by Respondent on Golf Course Road, Sector 53, Gurugram. It is pertinent to state here that the residents of the said project have never faced any shortage/inadequacy of supply of electricity. It is also apposite to mention here that the said project stands completed since long time. Occupation Certificate regarding the said project stood received vide Memo bearing Nos. 204 dated 08.01.2009, ZP-89/JD(BS)/2010/7449 dated 10.06.2010 and ZP-89/JD(BS)/2010/11354 dated 13.09.2010, followed by Completion Certificate regarding the said project which was received vide Memo No. LC-409/RL-128/ZP-89-JE(B)-2011/8424 dated 24.06.2011. Copies of such memos are annexed collectively**.** Moreover, it would be relevant to state here that the said project stands validly handed over to '*Vipul Belmonte Apartment Residents Association*' vide 'Handover and Take Over Agreement' dated 04.02.2015, annexed, and as such, no liability regarding the said project can be said to be attributed to Respondent.

10.11. That, similarly, as far as the project listed at Serial no.4 in Annexure P-12 to the captioned Petition, namely 'Maxworth (Vipul Green)', though the complete and correct name of the Project would be Maxworth Marketing Pvt Ltd (Vipul Green), which is a residential complex situated at Village-Teekri, Sector 48, Gurugram, is concerned, it is submitted that a sanction of 3933 KW with CD of 4370 KVA on 11 KV supply with applicable bulk supply tariff by Chief Engineer- Operation, DHBVN, Gurugram was granted to the Respondent vide Memo no. Ch-3/WO/DRG/1308/04-05 dated 04-04-2005 and consequently on compliance by Respondent with the conditions enlisted in the said memo, electricity connection was released for the said Project. It is worthwhile to mention here that the residents of the said project have never faced any shortage/inadequacy of supply of electricity. The maximum demand reached till date is 1741.6 KVA against the sanctioned CD of 4370 KVA which is only 40% of the total sanctioned CD. It is also apposite to mention here that Occupation Certificate regarding the said project stand received vide Memo Nos. 17202 dated 04.07.2007, 5285 dated 04.03.2008, ZP-30 Vol-III/JD(BS)/2010/7937 dated 22.06.2010, ZP-30 Vol-II/JD(BS)/474 dated 14.01.2011, ZP-30 Vol-II/JD(BS)/2012/27195 dated 29.12.2012 and ZP-30 Vol-II/JD(BS)/2013/39595 dated 15.05.2013. Copies of such memos are annexed collectively. Moreover, it would be relevant to state here that the said project stands validly handed over to '*Vipul Greens Residents Welfare*

Association' vide letter dated 01.04.2018 and as such, no liability regarding the said project can be said to be attributed to Respondent.

10.12. That as far as the project listed in the table annexed as Annexure P-12 at Sr. No.5 i.e. Tatvam Villa (Part of Vipul World), is concerned, it is humbly submitted that towards revised total demand of Rs. 999.20 lakhs, which was communicated by Petitioner vide Memo No. 4230 dated 28.07.2022 after request by Respondent was made to the Petitioner to make correct calculations, towards project namely, Vipul World (comprising of Vipul Business Park and Tatvam Villas) located in Sector 48, Gurugram, Bank Guarantee Nos. 091971122000018 dated 22.09.2022 for Rs. 2,50,00,000/- valid upto 22.09.2024 and 091971122000018 dated 07.10.2022 for Rs. 7,49,20,000/- valid upto 06.10.2024 stand submitted by Respondent. Thus, no direction, as has been sought by the Petitioner, for furnishing of the Bank Guarantees in order to cure the alleged inadequacies, is required to be issued and the claim in the petition itself does not survive. Copies of such Bank Guarantee bearing Nos. 091971122000018 dated 22.09.2022 for Rs. 2,50,00,000/- valid upto 22.09.2024 and 091971122000018 dated 07.10.2022 for Rs. 7,49,20,000/- valid upto 06.10.2024 are being annexed.

10.13. That notwithstanding above, as delineated by Petitioner in Memo No. 3964 dated 08.07.2022, the load of the project listed at Serial no.4 in Annexure P-12, namely Maxworth(Vipul Green) is stated to be 5668.59 KVA and as per norms laid down by Petitioner, the same falls under the category of 33 KV level. As both the projects, the one mentioned at Sr. No.4 and also the one mentioned as Sr. No.5, are being developed by the Respondent, in view of this, it is humbly submitted that the infrastructure created for Tatvam Villa (Part of Vipul World) can easily support the load requirement for Maxworth Marketing Pvt Ltd (Vipul Green) as well. The same is being elaborated in the table below.

Name of the Project	**Required Load in MVA**	**Installed Capacity**
Tatvam Villa(Part of Vipul World)	13	12.5 x 2 = 25 MVA
Maxworth(Vipul Green)	5	
Total	18 MVA	

10.14. That since the total load for both the projects comes out to be 18 MVA which is much lesser than the installed capacity of 25 MVA, the load requirement for Maxworth Marketing Pvt Ltd (Vipul Green) can be met through infrastructure installed in Tatvam Villa(Part of Vipul World) which will also prevent unnecessary hazardous creation of 33 KV level sub-station. At this juncture, it would be pertinent to bring it to fore that Respondent has already identified land admeasuring 958.807 sq. mtrs. (0.236 acres triangular in shape), located within the Project land of Tatvam Villa (Part of Vipul World), earlier earmarked for creation of crèche but now approved by the Directorate of Town and Country Planning (hereinafter referred to as 'DTCP') for the creation/construction of 33 KV substation and the same has been acknowledged Petitioner vide its Memo bearing No. 4229 dated 28.07.2022. In

furtherance of such offer of land for creation of 33 KV sub station, Petitioner Suitability Committee Team had visited the site on 20.07.2022 and a suitability report had also been submitted to SE(OP) Circle-ll, Gurugram for further recommendation of the same to higher authorities, subject to fitment of the equipment and approval of GELO by competent authority. A copy of Memo bearing No. 4229 dated 28.07.2022 and Suitability Report is annexed. It would not be out of place to mention here that Respondent has sought Change of Land Use of the land, as described above, from Crèche to 33 KV HT sub station and vide Memo no. ZP-274/PA(DK)/2023/4724 dated 17.02.2023, DTCP, in addition to making demand of revised layout plan for approval and requisite fees which stands submitted on 03.03.2023, and in-principle approval for the request of Change of Land Use made by Respondent, was being considered as conveyed vide Memo no.ZP-274/PA(DK)/2023/4724 dated 17.02.2023, a copy whereof is annexed, and copy of letter dated 03.03.2023 addressed to DTCP by Respondent in reference to Memo no. ZP-274/PA(DK)/2023/4724 dated 17.02.2023 submitting revised layout plan and delineating details of payment of scrutiny fees is annexed.

10.15. That as far as project listed in the table annexed as Annexure P-12 at Sr. No.6 i.e. Inderprastha, is concerned, it is humbly submitted that Respondent has no concern whatsoever with the said project. Respondent is involved in no way with the said project as on the present date. The said project has been developed by Vipul Trade Centre Developers Pvt. Ltd. and Respondent is neither a stakeholder nor a shareholder in the said company. Respondent was only entrusted with the responsibility of marketing the said project and has no obligations/liabilities towards electrical infrastructure inadequacy, if any, in the said project. Demands raised against the Respondent regarding the said project ought to be withdrawn by Petitioner.

10.16. That without prejudice to the above, Respondent reserves it right to file a detailed reply to the captioned Petition in case need so arises. The Respondent further humbly submits that the averments and the contentions, as stated in the captioned petition, may not be taken to be deemed to have been admitted by the Respondent, save and except those which are expressly and specifically admitted and the rest may be read as travesty of facts.

11. The case was heard on 05.07.2023, Sh. Samir Malik, counsel for the petitioner submitted that rejoinder to reply of respondent is ready and requested for placing it on record. The Commission ordered to take on record the rejoinder. Ms. Mehar Nagpal, Proxy counsel appearing for the respondent, stated that pleadings are complete; however, arguing counsel is unable to appear due to an urgent case in the High Court and requested for short accommodation.

12. **Rejoinder by Petitioner, DHBVN received on 06/07/2023:**

12.1. The present rejoinder is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limited/Petitioner ("DHBVN"), in response to the reply filed by the Vipul Limited/Respondent No. 1 ("Vipul Ltd.") in the above captioned petition and all the submissions are made in the alternative and without prejudice to each other.

12.2. It is submitted that all allegations made by the Respondent are denied in totality and the same may be treated as a denial as if it was made in seriatim. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.

12.3. At the outset, the Petitioner denies all and singular allegations, contentions and submissions of the Respondent in the above Writ Petition which is contrary to or inconsistent with what is stated in this affidavit in reply, except those are matters of record and/or specifically admitted herein. The Petitioner is submitting an issue wise reply to the reply for the sake of brevity and convenience. The Petitioner should not be deemed to have admitted any of the allegations, contentions or submissions of the Respondent unless specifically admitted herein.

RE: RESPONSE TO AFFIDAVIT

(A) Obligation of License Holder

12.4. At the outset, the Respondents contends that one Orchid Infrastructure and Developers (P) Ltd. ("OIDPL") and the Respondent had jointly pooled in resources for development of real estate projects. However, due to differences both the Developers split the projects created by them through a mutual understanding.

12.5. It is pertinent to note that a Memorandum of Understanding ("MOU") is merely statement of understanding between two or more parties which when made has no enforceability in the eyes of law as such an agreement has no intention to create a legal bond between such persons. It is well established rule of law that all contracts are agreement, but all agreement are not contracts. A contract is valid if it fulfils all essential ingredients mentioned under section 10 of Indian Contract Act, 1872.

12.6. It is also important to note that nomenclature of a contract or an agreement is not an index to determine the validity or invalidity of the same. Therefore, an agreement to be a MOU does not explicitly denote that such contract is non-binding aand to prove a MOU be binding, it essentially covers the following:-

a. A MOU must fulfils all ingredients of section 10 of Indian Contract Act.
b. A MOU must compel the other person to oblige to the same and breach of such MOU will be treated similar to that breach of contract.

12.7. The use of words 'may', 'shall', 'would be' and 'should be' are important to while interpreting the construction of any document. The use of words shall, would ,should, instead of may, can, might are of superior nature and bind the acts which follow after such words. If the MOU fulfils the conditions as laid down under section 10 of the Indian Contract Act, such MOU should be treated as a contract as defined under section 2(h) of the Indian Contract Act and hence, giving it a legal force.

12.8. In the case of Jyoti Brothers Vs Shree Durga Mining Co, AIR 1956 Cal 280, the Hon'ble Calcutta High Court held that the Court will rely upon the degree to which such understanding is signed between the parties and whether any of them has acted in reliance on such understanding. Also, Hon'ble Supreme Court held in the case of Jai Beverages Pvt. Ltd. Vs. State of J&K & Ors, AIR 2006 (4) SCJ 401, that MOU can be regarded as a legally enforceable contract if it is in a formal way and parties profit from functioning in compliance with the provision specified in the MOU .

12.9. Further in another judgement of Nanak Builders and Investors Private Limited Vs. Vinod Kumar Alag, AIR 1991 Del 315, Hon'ble Delhi High Court held that important significant conditions have been consented upon and reduced to them in writing, and the agreement so entered into does not cite that another legal agreement will be implemented, the agreement will not be considered an incomplete contract. In another judgement of Brikram Kishore Parida Vs. Penudhar Jena (AIR 1976 Orissa 4), Hon'ble Orissa High Court has held that the clauses such as indemnification clause is legally enforceable on the parties to the agreement.

12.10. Therefore, in terms of above quoted judgements, the MOU in present case need to be analysed regarding intent of parties as far as obligations are concerned and at the same time, language and construction are also important to treat the MOU as binding. Further, in another judgement of Milenia Realtors Private Limited vs SJR Infrastructure Private Limited that the MOU are not to be interpreted as contingent contracts, and are capable of enforcement.

12.11. It is noteworthy that the clauses in the MOU categorically specifies the conditions between the parties for which the MOU was made. The MOU relates to jointly pooling of the resources and the energies between the parties. The MOU only envisages for the procurement, acquisition, development, promotion and sale of the various real estate projects agreed between the parties i.e., Vipul and Orchid. It is noteworthy that the MOU nowhere talks about the transfer of ownership between the parties, which implies that there is no sale/transfer of title between the parties. However, there is mention of indemnification in clause 3 which shows that Vipul and Orchid are under obligation to indemnify each other in case any liability of any nature is present. The liability of paying bank guarantee towards the inadequacy in Infrastructure is a statutory violation and querist is at its liberty to take the BG from Vipul if it fails to provide the BG for its project mentioned in the schedule of MOU. Similarly, the querist can demand the BG from Orchid related to its project as mentioned in Schedule of MOU. In terms of clause 3 of the MOU, querist can demand the BG from either Vipul or Orchid if either of them fails to provide the BG under their respective projects. Clause 3 of MOU is reproduced below:-

"3.……Both the parties undertake to indemnify each other in case any liability of any nature whatsoever is fastened on the other party to this MOI due to any statutory violation committed by the party to whom a particular project as stated above has been allocated…."

12.12. Further under Clause 5 of the MOU, it is clearly the intent of the parties herein that are Vipul and Orchid that they have not given final legal shape to the MOU and same would be executed in due course of time. Relevant clause is reproduced below:-

"5. That both parties shall endeavour to give a final/legal shape to this broad understanding in a short span of time. As an intimal step, both parties are proceeding to execute general power to attorneys in favour of nominee (s) of the concerned party with regard to projects specifically allocated to a particular party."

12.13. Therefore, it is prudent from the above quoted clauses read with judgements that Vipul and Orchid has agreed to take the liabilities and obligations towards each other's projects which is also mentioned in clause 3 of the MOU and it has a legal binding effect. The said clause covers the Project also and BG

submitted by Orchid against the Project is admissible in law and can be taken into consideration towards the liability of Vipul. Further in terms of the sample flat agreement, it is clear that the sale consideration is being paid by the respective flat allotee to Orchid. Also, it is important to note that clause 3 uses the word "shall' which is of superior nature and is creating an obligation on the parties.

12.14. The license issued by DTCP is in name of Vipul, and there is no collaboration agreement being signed between Vipul and Orchid, however, the liabilities of Vipul can also be discharged by Orchid in terms of MOU read with the Sample Flat Buyer's agreement provided to us.

12.15. At the same time, clause 5 has to be read together and it is clear from said clause that final terms and conditions have not been signed yet. Therefore, at this juncture, Vipul and Orchid have the obligations towards each other and they both are liable to indemnify each other against any statutory violation. Therefore, BG can be demanded from either of them if one fails to provide the BG of their respective projects envisaged in the schedule of MOU. However, transfer of ownership cannot be determined by the MOU in terms of the judgement Guru Nanak (Supra).

12.16. It is submitted that the Respondent is erroneously contending that on account of a separation of the joint venture partnership between Vipul Ltd. and OIDPL, the respondent is not liable for any inadequacy for the projects belonging to OIDPL. Namely, "Orchid Infrast (P) Ltd." and "Vipul Infra – Orchid Petal" bearing Serial No. 1 and 2 respectively in the Annexure P-12 of the petition.

12.17. It is submitted that the separation between Vipul Ltd. and OIDPL has no bearing on the responsibility of the Respondent as the original Electrification Plan for the entire scheme of was approved by DHBVN in the name of Vipul Ltd. (Respondent herein).

12.18. It is pertinent to note that this Hon'ble Commission in PRO 48 of 2020 has settled the law, that as per relevant Regulations in vogue, it is obligatory on part of the "License Holder" to deposit requisite bank guarantee for development of electrical infrastructure. It has also held that approval of beneficial interest by DTCP does not absolve the license holder from creation of inadequate infrastructure. The relevant portion of the judgment is reproduced as under:

6.1 At the outset the counsel for petitioner submitted that the petitioner is an independent licensee for an area of 11.90 acres out of 124.39. acres and has completed all the necessary infrastructure requirements and the occupation certificate from DTCP also stands issued. Further, the petitioner is ready to submit requisite bank guarantees for the said area, if any. Per contra the counsel for the respondents submitted that the petitioner has been given only beneficial interest by DTCP stating terms and conditions stipulated in the license issued by DTCP shall remain same and the Licensee Company i.e. M/s Country Wide promotors shall be responsible for compliance of all terms and conditions of the license. The respondent further raised the issue of jurisdiction claiming that applicant/consumers need to approach an appropriate forum for redressal of grievances as per Regulations in-vogue and quoted the judgment of the Apex Court of law in this regard. He further submitted that the issue of inadequate infrastructure and failure to provide the requisite bank guarantee by Country Wide developers is already pending adjudication (i.e. Civil writ Petition no. 15141 of 2019) before Hon'ble High Court Punjab and Haryana.

6.2 The Commission has carefully examined the petition, the submissions made in writing and also submissions made during the course of the hearing. The Commission, upon hearing the parties at length in the matter, observes that as per the mandate of the relevant Regulations in vogue it is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers. The petitioner society falls within the licensed area of M/s Country Wide developers and approval of beneficial interest by DTCP does not absolve them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers for which the case is pending for adjudication (i.e. Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana."

12.19. It is apparent from the above-mention order of this Hon'ble Commission that creation of electrical infrastructure is the sole responsibility of the license holder Any part completion certificate issued by DTCP does not absolve them from creation of inadequate infrastructure in the entire subject area.

(B) Obligation arising from applicable load norms

12.20. It is further submitted that the Respondents are obligated to erect the electrical infrastructure in compliance with the load norms that exists on date. Hence, the averments made by the respondent regarding maximum demand, lack of shortage in the project areas, or handing over the project to RWA is irrelevant to the matter at hand and does not absolve the Respondent from their obligation to develop adequate infrastructure. The responsibility is of the developer until the NOC regarding the adequacy of the electrical infrastructure in the project is issued by DHBVN.

12.21. In this regard, it is pertinent to state that initially load norms were fixed as per the declaration given by the developer and its subsequent acceptance by HSEB. However, due to rampant urbanization, the electrical infrastructure developed by their respective builders / developers started proving to be inadequate causing a lot of problems for the consumers like frequent power cuts, breakdowns, poor voltages, and ultimately putting a lot of pressures on the existing electrical transmission and distribution infrastructures of the licensee. S. 46 of the Electricity Act, 2003 authorizes a distribution licensee to charge from a person any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply of electricity in pursuance of section 43. Thus, the distribution utilities decided to revise load norms in 2004 calling upon the builders / developers to follow these norms and to create an electrical infrastructure adequate enough to cater to the electricity needs of their residents.

12.22. These load norms were further revised and rationalized in 2006 and were circulated by DHBVN vide instruction no. 8/2006/PD&C dated 17.07.2006. The same were further reaffirmed in 2011 by way of instructions vide Sales Circular No. 9/2011 dated 9/5/2011.

12.23. However, majority of the builders / developers including the Respondent herein, whose electrification plans had been approved by the DHBVN way back, did not create adequate electrical infrastructure till date, with the result

that most of the substations became overloaded. Thus, even when electricity has been surplus in Haryana, DHBVN was not able to either release new connections or to make more power available to its consumers.

12.24. Several meetings were held between Power Department, HUDA and Town & Country Planning and Power utilities on the issue of calculation of inadequacies in electrical infrastructure on the basis of prevalent load norms. However, finally in the meeting held on 13.12.2013 under the Chairmanship of PS (Power) regarding pending issues of HUDA, HSIIDC & Power Utilities, it was decided that load norms and other factors as finalized in the review meeting will be applicable retrospectively from January, 2006. It was further decided that in future, these load norms will be revised / updated every three years in sync with update of EDC charges and will be made applicable prospectively. Consequently, a minutes of meeting (MoM) dated 20.01.2014 was prepared and circulated to all departments concerned.

12.25. Pursuant to the MoM dated 20.01.2014, DHBVN issued a sales Circular being D-9/2014 dated 27.01.2014 notifying the load norms which were to be applicable retrospectively w.e.f. 2006.

12.26. Subsequently, in the year 2017, load norms were revised by the DHBVN vide sales Circular no. D-16/2017 dated 12.04.2017. The said sales circular provided that "*viii) These load norms will be revised / updated every three years in sync with updating of EDC charges and will be made applicable prospectively."*

12.27. Thereafter, another sales circular was issued by the DHBVN, with the approval of the State Government, being Sales Circular no. D-24/2019 dated 27.06.2019 on the issue of assessment of inadequacy cost on account of deficient/ inadequate infrastructure created/ erected by the Developers, by amending the sales Circular no. D-16/2017. Vide the said sales circular, it was decided as under:

"in case of any reduction or increase in load norms takes place at a later date which in turn results in decrease or increase in the amount of inadequacy as compared to the previous load norms, such changes in the load norms will be applicable retrospectively in all those cases which stand sanctioned prior to such revision but where the infrastructure is yet to be created. Such retrospective changes will be applicable in those cases also where the infrastructure according to old norms has been erected partially and the remaining infrastructure is yet to come up."

12.28. The inadequacy in the present case has been calculated as per the revised load norms in terms of the above mentioned Sales circular along with D-21/2020 reflected in Annexure P-1 of the Petition. At this juncture, it is pertinent to state that the Respondent herein has never challenged any of these Sales Circulars. Therefore, the respondent is estopped from raising any contention belatedly challenging the sanctity of these sales circulars or the calculation made pursuant thereto.

12.29. Moreover, this Hon'ble Commission has already upheld in the order dated 20.02.2015 passed in HERC PRO No. 21 and 23 of 2013 titled as *Ansal Buidlwell Vs. DHBVNL & ORs*, that until the project is taken over by DHBVN, the developer is obligated to create/update the infrastructure as per the load norms prevailing on date. Relevant portion of the order is extracted hereunder:

""*Issue No. 2*

Whether the electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if during the course of development by the developer/agency, the norms of calculating ultimate load are revised?

…

The Commission agrees with the contention of the Respondent No. 1 that the load norm primarily determines the load that would expectedly come up on the transmission and distribution system at any point of time according to which the minimum capacity of infrastructure to be created is determined in order to ensure uninterrupted and quality power to the consumer. Accordingly, the load norms have been revised and are reviewed from time to time with increase in consumption pattern to ensure that the builder/ developer whether private or the Government, installs adequate electrical infrastructure for the residents of the area to cater to their electricity needs and the usage pattern.

The Commission, thus, hold that the electrical layout plan and the electrical infrastructure approved for a colony can be revised if, during the course of development by the developer/ agency the norms for calculating ultimate load of the colony are revised. The Commission, therefore, answers the issue no.2 in the affirmative."

12.30. The said order has been challenged by the developer vide CWP No. 6460 of 2015 and 6452 of 2016 and the same are pending for adjudication. However, it is noteworthy that there is no stay on this order by the Hon'ble P&H High Court till date. Thus, at present, the order dated 20.02.2015 is occupying the field of law.

12.31. As stated above, the Developers through their association CREDAI had approached the Govt. of Haryana for the reassessment of load norms issued vide Sales Circular No. D-9/2014 by DHBVN. Accordingly a committee was constituted and load norms were revised on the recommendation of the committee during 2017 vide Sales Circular D-16/2017 dated 12.04.2017.

12.32. Thereafter, in order to reassess the total inadequacies on account of the revised norms, another committee comprising XEN now SE (OP) Circle Palwal, XEN Smart Project, XEN Sohna now XEN Palwal and XEN S/U Gurgaon now XEN Dadri was constituted in June 2019 to work out the amount of electrical inadequacies against the Respondent and other delinquent developers.

12.33. It is submitted that the Respondent has neither challenged the sales circular, nor the notices issued by DHBVN and DTCP before any forum which means that the Respondent has accepted these calculations. Therefore, the Respondent at this stage is estopped from belatedly challenging its obligation in the present petition.

(C) Inderprastha Project belongs to Vipul Limited

12.34. Respondent has lied through its teeth in making the averment that the Inderprastha Project (Sr. No. 6 in Annexure P-12) does not belong to it. Further the Respondent has failed to justify this averment.

12.35. It is submitted that license dated 19.02.1999 had been granted to one M/s Landmark Suit Pvt. Ltd. by DTCP for setting up a commercial colony at village Fazilpur Jharsa, Disrtict Gurugram. The sanction issued for this commercial colony was under the name of "Inderprastha". In fact, the above-mentioned license has been signed by the authorised signatory for Inderprastha

Premises. A copy of the license dated 19.02.1999 granted to M/s Landmark Suit Pvt. Ltd is marked and annexed.

12.36. It is apposite to highlight that M/s Landmark Suit Pvt. Ltd has been amalgamated with Vipul Limited in 2009. Vide order dated 04.08.2009, the Hon'ble Delhi High court in Company Petition No. 09 of 2009 sanctioned the Scheme of Amalgamation wherein M/s Landmark Suit Pvt. Ltd. was proposed to be amalgamated with Respondent. A copy of the order dated 04.08.2009 is marked and attached**.**

12.37. In light of the foregoing, it is evidently clear that Inderprastha is Respondent's project.

(D) Submission of Bank Guarantee

12.38. It is submitted that on 17.05.2022, a notice was issued by the petitioner to the respondent for submitting bank guarantee amounting to Rs. 18.63 lacs against inadequate infrastructure. In response to this, the Respondent vide letter dated 06.06.2022, requested DHBVN to issue notice for submission of bank guarantee separately for all projects.

12.39. Accordingly, DHBVN issued a revised notice dated 28.06.2022 for the project named Tatvam Villa/Vipul World for furnishing of bank guarantee amounting to Rs. 10.63 Crores. It is submitted that the Petitioner further amended the amount of Bank Guarantee to be furnished to Rs. 9.99 crores vide Memo No. 4230 dated 28.07.2022. A copy of the correspondence between the Petitioner and Respondent is marked and annexed.

12.40. In view of the above, the developer submitted a bank guarantees dated 22.09.2022 for Rs, 2,50,00,000/- valid up to 22.09.2024 and one dated 07.10.2022 for Rs. 7,49,20,000/- valid up to 06.10.2024.

12.41. In view of the aforesaid, it is pertinent to note in spite of the adjustment of the cost of inadequacy in the aforementioned BG, the deficiencies pertaining to the electrical infrastructure still remain. It has been more than a decade since DHBVN has been chasing delinquent developers to cure the deficiencies but till date, there has been no progress in that regard. No plan has been put forth by the Respondent as to how they intend to proceed.

12.42. It is submitted that the furnishment of a Bank Guarantee or the adjustment of cost thereto, does not absolve the Respondent from the obligation to create an adequate electrical infrastructure. Bank Guarantees may keep getting renewed, but the crux of the present petition lies in the creation of such infrastructure and fulfilment of Respondent's obligation.

12.43. In this regard, it is imperative that the Respondent be directed to cure the deficiencies, so that the hardships faced by the consumers can be addressed and catered to by the Petitioner.

12.44. In light of all the aforesaid submissions, the Respondent is liable to cure the inadequacies of this project before seeking approval for extension of load.

12.45. In view of the above submissions it is respectfully prayed that this Hon'ble Commission may be pleased to allow the petition.

13. **Affidavit of the petitioner DHBVN dated 11/09/2023:**

The affidavit submitted by the petitioner was not correct. The facts and figures contained in the affidavit were pertaining to Uppal Housing Pvt. Ltd. However, Annexure-2 of the affidavit indicates a total of inadequacies amounting to Rs. 1862.78 Lakh for 5 projects.

14. The case was heard on 13.09.2023. Sh. Samir Malik, counsel for the petitioner submitted an affidavit with regard to the status of inadequacy and requested for placing it on record. The Commission directed to take the same on record. Sh. Ashish Chopra, counsel for the respondent, requested for some time to go through the affidavit and respond to the same. Acceding to the request of the respondent, the Commission adjourned the matter.
15. The case was heard on 25.01.2024. Sh. Japjot Singh, counsel for the respondent, requested an extension of time for the submission of a response to the petitioner's rejoinder. The Commission notes that ample opportunity was afforded to the respondent as per his request to file response to rejoinder since issuance of interim order dated 14.09.2023. After a period of 4 months, the respondent is still seeking time to file its reply. The respondent-developer is not adhering to the directives of the Commission and adopting dilly delaying tactics. Consequently, both parties are directed to be present for their final arguments on the next date. In case the respondents wish to file response to the rejoinder, they are permitted to do so, within two weeks from the date of this order with an advance copy to petitioner, subject to the payment of cost of Rs. 25,000/- for delayed submission.
16. The case was heard on 21.02.2024. Ms. Meher Nagpal, counsel for the respondent, submitted that respondents don't wish to submit any response to the rejoinder. Sh. Manuj Kaushik advocate on behalf of petitioner requested for short adjournment as the main counsel is not available for arguments. The counsel for respondent also made similar request. Acceding to request of both the parties, the Commission adjourns the matter and directs the parties to be present on next date for final arguments as pleadings stand completed.
17. The case was heard on 14.03.2024. Sh. Ashish Chopra, counsel for the respondent, submitted that as the matter is similar to earlier heard petition No. 44 today, hence the same may be listed on the same day. Acceding to request, the Commission adjourns the matter and directs the parties to be present on next date for final arguments as pleadings stand completed.
18. The case was heard on 07.05.2024. Sh. Shaida Dass, counsel for the petitioner, requested for short adjournment as the arguing counsel is not present due to bereavement of someone in his family. Acceding to request, the Commission adjourns the matter and directs the parties to be present on next date for final arguments.
19. The case was heard on 06.06.2024. Sh. Yash Pal Sharma counsel for the respondent requested for short adjournment due to non-availability of the arguing counsel and for listing the case in the month of July, 2024. Acceding to request, the Commission adjourns the matter and directs the parties to be present for final arguments on next date of hearing.
20. The case was heard on 17.07.2024. Ms. Meher Nagpal Counsel for the respondent submitted that the inadequacy amount requires recalculation and clarifications. The Commission advised both the parties to hold a conciliation meeting to reach at a consensus regarding pending physical and financial inadequacies. Both parties agreed to hold a conciliation meeting within two weeks and to submit the report before the next date of hearing.

21. The case was finally heard on 25/10/2024, as scheduled, in the courtroom of the Commission.

Ms. Meher Nagpal, counsel for the respondent submitted that the re-conciliation meeting is in progress with the petitioner and requested for more time to submit outcome of the meeting.

The Commission conveyed that ample time has already been given to the parties for reaching at any agreement but no positive outcome has surfaced till date. The Commission directed the parties to start their arguments.

The counsel for the respondent submitted that the arguing counsel is not present and again requested for some time.

The Commission enquired about the status of the Conciliation meeting. The petitioner submitted that Pursuant to the Order dated 18.07.2024 by this Hon'ble Commission, Conciliation meetings were scheduled between the Petitioner and the Respondent on 02.08.2024 and 21.08.2024 at the Petitioner's office. However, the said meeting remained inconclusive and hence, the issues regarding inadequacies in the electrical infrastructure remains pending.

Taking note of the non-serious attitude of the respondent, the Commission directed the parties to submit their written statements within 3 days i.e. upto 29/10/2024.The final order was reserved.

22. No written statements have been filed by the Respondent developer.

Written Submissions of DHBVN dated 29/10/2024

23. The petitioner DHBVN in compliance to the orders of the Commission submitted its written statement as under:

The present petition has been filed by Dakshin Haryana Bijli Vitran Nigam Limited ("DHBVN"/ "Petitioner") to ameliorate the hardships faced by the owners/occupants of premises/units seeking new electricity connection/additional load etc. within projects/areas, where M/s Vipul Limited ("Respondent"/" Developer") has not installed adequate electrical infrastructure. The Petitioner faced with the conundrum of inadequate electrical infrastructure within said projects/areas, issued a Sales Circular no. D-21/2020 dated 07.09.2020 inter alia putting embargo on release of new connections. (Prayer)

Petitioner had earlier filed a common petition being PRO 55 of 2021 whereby the commission vide its order dated 02.02.2022 was pleased to permit the petitioner to release new electricity connections/additional load on voluntary payment of developmental charges in the interim. Vide order dated 15.08.2022, commission directed petitioner to file separate petitions for each of such builders. Therefore, in light of Hon'ble Commission's Order dated 02.02.2022, present Petition was filed.

The present Written Submissions are being filed on behalf of DHBVN in furtherance of the liberty granted by this Hon'ble Commission vide its Order dated 25.10.2024.

DHBVN'S CONTENTIONS:

a) Responsibility/ obligation to create the required electrical infrastructure is settled

The responsibility of the builder/developer for erecting/ developing the required electrical infrastructure within the projects developed by them is carved out from the regulations in force read along with various orders/judgments of the commission as well as the High Court passed from time to time as will be detailed below.

b) Applicability of load norms

The Developers/Builders, that have developed projects within the Petitioner's license area, failed to install adequate electrical infrastructure to cater to the load as per electrical layout plan approved by the licensee in accordance with the applicable load norms. In this regard, it is relevant to state that the commission has rightly acknowledged in its orders that the EP can be revised if during the course of development by the developer, the load norms are revised. Besides this, the following sales circulars issued by DHBVN from time to time are relevant:

DHBVN issued Sales Circular being D-9/2014 dated 27.01.2014 notifying the load norms which were to be applicable retrospectively w.e.f. 2006

Subsequently DHBVN issued SC No. D-16/2017 dated 12.04.2017 issuing fresh load norms and also provided that the load norms will be revised / updated every three years in sync with updating of EDC charges and will be made applicable prospectively

Sales Circular no. D-24/2019 dated 27.06.2019 was issued by DHBVN with approval of the State Government wherein it was decided that the revision in the load norms will be applicable retrospectively in all those cases which stand sanctioned prior to such revision but where the infrastructure is yet to be created and also, in those cases also where the infrastructure according to old norms has been erected partially and the remaining infrastructure is yet to come up.

c) Prevailing inadequacies

This situation of inadequacies exists even after sale of units/premises in these projects/colonies. A detailed break-up of the inadequacies existing as on date in the subject project of the developer is provided @Pg 187 of Petition and @Pg 10 of affidavit dated 01.05.2023.

d) Relevant Judicial Precedents

The above approach adopted by DHBVN has found resonance in the following orders of Ld. HERC and the Hon'ble High Court:

In Ansal Build Well v. DHBVN & Ors., HERC/PRO-21 & 23 of 2013, Ld. HERC held that developers must install electrical infrastructure per the approved layout plan and applicable load norms during project development, aligning with the terms of their license and agreements.

Ansal Build Well challenged HERC's order in the High Court of Punjab and Haryana. However, the court has not granted a stay, and the order remains in effect.

Pertinently, Ansal Properties and Infrastructure Ltd. had also filed a writ petition titled as Ansal Properties and Infrastructure Ltd. v. State of Haryana, CWP No.2467/2013 inter alia challenging its obligation to erect/bear cost of required electrical infrastructure. This writ petition was dismissed as withdrawn by the Hon'ble High Court on 19.07.2017.

In Anandvilas 81 Resident Welfare Association v. DHBVN, HERC/PRO48/2020, Ld. HERC emphasized that developers are legally obligated to obtain approved electrification plans based on peak load requirements and to provide bank guarantees before releasing electrical connections.

In context of grant of electricity connection in areas where there exist electrical inadequacies, this Hon'ble Commission in Confederation of Real Estate Developers Association of India – Haryana (CREDAI-HR) v. DHBVN, HERC/PRO-68/2020, Ld. HERC held that circular provisions against developers' defaults are valid and necessary. Developers must install adequate infrastructure within defined timelines to maintain supply quality for residents. Temporary connections meant for construction cannot substitute regular connections without an approved electrification plan.

e) Relevant Provisions of Electricity Act, Duty to Supply Regulations, 2016 and Supply Code Regulations, 2014- and Single-Point Supply Regulations

It is Respondent's contention that as per S. 43, 46 and 50 of the Electricity Act, 2003, this Hon'ble Commission does not have any power to adjudicate on the issues or grant relief prayed for. However, the same is incorrect as the below mentioned legal framework allows the Ld. Commission to adjudicate upon the issues mentioned in the present Petition.

<u>Re. Electricity Act, 2003</u>

As per Section 46 of the Electricity Act, this Hon'ble Commission by regulations may authorize a distribution licensee to charge from a person when an application under Section 43 of the Electricity Act is made for a new connection.

Section 46 of the Electricity Act, 2003 empowers State Commission to frame regulations to authorise a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Pursuant to the above and in exercise of its powers under Section 181 of the Electricity Act, 2003, HERC framed Supply Code and Duty to Supply Regulations.

<u>Re. Duty to Supply Regulations, 2016</u>

As per Regulation 4 of the HERC Duty to Supply Regulations, 2016, DHBVN is empowered to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.1 reads as under:
"Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations." (Emphasis supplied)

Further as per Regulation 4.12.2, as it stood before the 2020 amendment, the procedure for electrifying Urban Estates and Group Housing Societies required electrification work to be carried out by the relevant department, colonizer, or society, with prior approval of the plan and cost estimates from the Distribution Licensee. The Licensee's approval was based on a standard cost data book, ensuring that the estimates were standardized. The applicant was also required to pay supervision charges to the Licensee as specified under Regulation 4.9.1. At the time of energizing the system (connecting it to the main power grid), the Licensee had to verify that the electrification work had been completed according to the approved plan, which would ensure that the infrastructure met necessary safety and compliance standards. However, if the Licensee found that the electrification work was incomplete or deviated from the approved plan at the time of energization, the colonizer or developer would be required to furnish a Bank Guarantee ("BG") equal to 1.5 times the estimated cost of the remaining work. This BG served as a financial commitment to ensure completion of the infrastructure as planned. Without this BG, the Licensee was not permitted to release single-point or individual connections to the residents. This regulation was designed to protect residents by ensuring complete and compliant infrastructure, while also holding developers accountable and providing the Licensee with the means to enforce compliance.

Re. Supply Code Regulations, 2014

Apart from the aforementioned, as per Regulation 4.2.3 of the Supply Code Regulations, 2014 any costs involved in extending and upgrading the main distribution line up to the consumer's supply point, as well as any necessary system strengthening or upgrades from the feeding substation to provide power to that consumer, must be paid by the consumer. This responsibility applies to both new and existing consumers or any collective group of such consumers, following the regulations set by the Commission under Section 46 of the Electricity Act.

Re. Single Point Supply Regulations

Second proviso to Regulation 6.1. (a) of Single Point Regulations provides that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of Duty to Supply Regulations. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.

In summary, the Electricity Act, 2003, along with the Duty to Supply Regulations, 2016, Supply Code Regulations, 2014, and Single Point Supply Regulations, collectively set clear obligations and accountability for developers when it comes to the electrification of Urban Estates and Group Housing Societies. These provisions establish that any expenses reasonably incurred for providing electric infrastructure up to a consumer's supply point, including necessary upgrades or extensions, are recoverable from consumers or collective bodies as authorized by the State Commission. The regulations also empower distribution licensees like DHBVN to ensure that developers carry out complete and compliant electrification work as per the approved plan.

Further, these regulations mandate that before the system can be energized, the developer must have fully executed the electrification work according to the approved plan. If any deficiencies are identified, the developer is required to provide a Bank Guarantee covering the cost of the incomplete work (as specified under Regulation 4.12 of the Duty to Supply Regulations). This requirement safeguards residents by ensuring that they will not face service interruptions or safety hazards due to incomplete infrastructure. It also holds developers accountable for completing the work, while providing the distribution licensee with the necessary financial assurance to enforce compliance. Overall, these provisions ensure a robust framework to protect end-users, facilitate smooth distribution operations, and prevent any lapses in the quality of electrification work by developers.

f) Bilateral Agreement between Director General, Town and Country Planning, Haryana, ("DTCP") and Builders

Apart from aforementioned Regulations, the Bilateral Agreement between the DTCP, Haryana and builders mandates that developers are responsible for arranging an electric connection for the areas they develop. The agreement stipulates that the builder must secure an electric connection from an external source (Distribution Licensee) to electrify their colony. If the builder fails to do so, DTCP is authorized to recover the cost from the developer and transfer it to Distribution Licensee. Additionally, the builder is obligated to

install an internal electricity distribution system that meets the colony's peak load requirements. This internal infrastructure plan must be approved by Distribution Licensee, and completed before a completion certificate for the colony can be issued.

Therefore, the builder's duty to execute the necessary electrification work is explicitly included in their agreement with DTCP. Despite multiple demand notices, however, the Respondent has not provided the required electrical infrastructure, thereby violating the relevant provisions of the Electricity Act, 2003, the associated regulations, and the terms of their agreement with DTCP.

It emanates from the above regulations that liability to bear cost of extending the distribution system etc. shall be borne by either the builder, who developed a project and/or applicants/consumer(s) within such projects.

g) Obligations arising from applicable load norms

It is submitted that the Respondent is required to build electrical infrastructure that meets current load norms. Its claims regarding maximum demand or project handovers to the Residents' Welfare Association ("RWA") are irrelevant and do not relieve it of its responsibility to develop adequate infrastructure. This responsibility remains with the developer until the DHBVN issues a No Objection Certificate ("NOC") confirming infrastructure adequacy.

Initially, load norms were based on the developer's declarations and accepted by HSEB. However, urbanization has led to insufficient infrastructure, resulting in frequent power cuts and other issues for consumers, which have strained the existing electrical systems. Section 46 of the Electricity Act, 2003 permits distribution licensees to charge for costs incurred in providing necessary electrical infrastructure. In 2004, the load norms were revised, mandating that builders develop sufficient infrastructure to meet the needs of their residents.

Further revisions of these norms occurred in 2006 and 2011, yet many developers, including the Respondent, have failed to create the necessary infrastructure, causing overloading at substations. As a result, despite surplus electricity in Haryana, DHBVN has struggled to release new connections.

Meetings among the Power Department, HUDA, and planning authorities led to a decision on December 13, 2013, to apply revised load norms retroactively from January 2006 and update them every three years alongside EDC charge updates. Following this, a sales circular was issued on January 27, 2014, to notify these norms, and they were further revised in 2017.

In 2019, Sales Circular no. D-24/2019 dated 27.06.2019 addressed the assessment of inadequacies due to deficient infrastructure, stating that any changes in load norms would apply retroactively to previously sanctioned projects where infrastructure was yet to be created. The inadequacies for the current case have been calculated according to the revised norms outlined in the sales circulars.

The Respondent has not challenged any of these sales circulars, thus it is estopped from later contesting their validity or the calculations based on them. This Hon'ble Commission has upheld the obligation of developers to update infrastructure according to current load norms until the project is taken over by DHBVN. This obligation remains enforceable, as there is no stay on the relevant order by the High Court.

Developers, through CREDAI, sought a reassessment of load norms, leading to a committee's recommendations that resulted in a revision of load norms in 2017. A subsequent committee was formed in June 2019 to assess electrical inadequacies against the Respondent and other developers. Since the Respondent has not contested any notices or sales circulars from DHBVN, it is deemed to have accepted the calculations and is now barred from disputing its obligations in this petition.

h) Inderprastha Project belongs to Vipul Limited

Respondent has lied through its teeth in making the averment that the Inderprastha Project (Sr. No. 6 in Annexure P-12) does not belong to it. Further the Respondent has failed to justify this averment.

It is submitted that license dated 19.02.1999 had been granted to one M/s Landmark Suit Pvt. Ltd. by DTCP for setting up a commercial colony at village Fazilpur Jharsa, District Gurugram. The sanction issued for this commercial colony was under the name of "Inderprastha". In fact, the above-mentioned license has been signed by the authorised signatory for Inderprastha Premises. (Annexure A-2 of the Rejoinder)

It is apposite to highlight that M/s Landmark Suit Pvt. Ltd has been amalgamated with Vipul Limited in 2009.Vide order dated 04.08.2009, the Hon'ble Delhi High court in Company Petition No. 09 of 2009 sanctioned the Scheme of Amalgamation wherein M/s Landmark Suit Pvt. Ltd. was proposed to be amalgamated with Respondent. (Annexure A-3 of the Rejoinder). In light of the foregoing, it is evidently clear that Inderprastha is Respondent's Project.

i) Submission of Bank Guarantees

It is submitted that on 17.05.2022, a notice was issued by the petitioner to the if respondent for submitting bank guarantee amounting to Rs. 18.63 lacs

against inadequate infrastructure. In response to this, the Respondent vide letter dated 06.06.2022, requested DHBVN to issue notice for submission of bank guarantee separately for all projects.

Accordingly, DHBVN issued a revised notice dated 28.06.2022 for the project named Tatvam Villa/Vipul World for furnishing of bank guarantee amounting to Rs. 10.63 Crores. It is submitted that the Petitioner further amended the amount of Bank Guarantee to be furnished to Rs. 9.99 crores vide Memo No. 4230 dated 28.07.2022. (Annexure A4 of the Rejoinder)

In view of the above, the developer submitted a bank guarantees dated 22.09.2022 for Rs, 2,50,00,000/- valid up to 22.09.2024 and one dated 07.10.2022 for Rs. 7,49,20,000/- valid up to 06.10.2024.

In view of the aforesaid, it is pertinent to note in spite of the adjustment of the cost of inadequacy in the aforementioned BG, the deficiencies pertaining to the electrical infrastructure still remain. It has been more than a decade since DHBVN has been chasing delinquent developers to cure the deficiencies but till date, there has been no progress in that regard. No plan has been put forth by the Respondent as to how they intend to proceed

j) Affidavit by the Petitioner elaborating upon the inadequacies

Pursuant to the Order of this Hon'ble Commission, an affidavit was filed elaborating upon the inadequacies observed in the infrastructure laid by the Respondent. To assess the inadequacy, in June 2019, a committee was formed by the Petitioner, comprising the XEN now SE (OP) Circle Palwal, XEN Smart Project, XEN Sohna (now XEN Palwal), and XEN S/U Gurgaon (now XEN Dadri). This committee conducted inspections and determined that the required capacity for the Respondent's project is 5032.01 KVA, while only 3200.00 KVA is currently installed. (Annexure P-11 of the Petition)

The identified inadequacies consist of three components:

- Internal Inadequacies
- External Inadequacies
- Share Cost of Feeding End Substation

Internal inadequacies are assessed based on load capacity needs and the costs of the installed substation for both plotted land and high-rise commercial developments.

External inadequacies refer to the installed substations and underground electrical lines necessary for load fulfillment, such as the 11KV and 33KV underground lines.

The third component relates to the HVPN share-cost of the feeding end substation, calculated based on the required Mega Volt Amp (MVA) of

electricity, with underground line costs determined by their length (Annexure A-2 of the affidavit).

Respondent in para 13-14 has averred that the load requirement of its project "Maxworth Marketing Pvt. Ltd." can be met through the infrastructure installed in Tatvam Villa (project for which BG has been deposited). In this regard, it is submitted that each project for which an Electrical Plan is sanctioned is distinct and separate. Hence, there is no scope of adjustment load between two projects. Further, no regulation of this Hon'ble Commission allows for such adjustment either.

Despite these findings, the Respondent has not rectified these inadequacies, nor have they provided the necessary cost or bank guarantee to address the issues. Consequently, the substation is overloaded, leading to frequent outages that adversely affect consumers due to the developer's failure to deliver adequate electrical infrastructure. The Respondent is aware of these problems, but their insufficient response has worsened the situation for residents.

k) Inconclusive Conciliation Meetings pursuant to Order dated 18.07.2024

Pursuant to the Order dated 18.07.2024 by this Hon'ble Commission, Conciliation meetings were scheduled between the Petitioner and the Respondent on 02.08.2024 and 21.08.2024 at the Petitioner's office. However, the said meeting remained inconclusive and hence, the issues regarding inadequacies in the electrical infrastructure remains pending.

In view of the submissions made therein, it is humbly prayed that this Ld. Commission may be pleased to allow for the reliefs sought by the Petitioner in the present Petition or pass any other order in the interest of justice.

Commission's Analysis & Order

24. The Commission has considered the submissions made by the Petitioner in the Petition/Rejoinder, submission made in the reply filed by the Respondent and the pleadings made by both the parties and has also critically examined the entire material/information placed on the record by both the parties. Based on the facts placed before the Commission, the following issues are framed:

Wrong enlistment of certain Projects as being developed by Respondent

Obligation arising from applicable load norms

Recovery of expenditure incurred in curing inadequacies

The Commission examined the above issues as under:

Wrong enlistment of Projects as being developed by Respondent

1. The respondent-developer submitted that:
   a) Petitioner has wrongly enlisted certain Projects as being developed by Respondent which are being developed by a third party to the Petition, namely, Orchid Infrastructure and Developers (P) Ltd ('OIDPL'), that is, Orchid Infrastructure (P) Ltd.) and Vipul Infra- Orchid Petal, respectively, have been stated to be the Projects being developed by the Respondent. The Respondent and OIDPL had been jointly pooling their resources for procurement/acquisition, development, promotion and sale of various real estate projects. However, on account of differences between them and failed attempts to amicably resolve these differences, Respondent and OIDPL had executed a Memorandum of Understanding dated 30.09.2005 ('MoU'), wherein the parties had agreed to amicably split the Projects to enable both the Parties to independently undertake and execute ongoing projects and those which were yet to be developed. The projects allotted to OIDPL shall henceforth be managed, sold, marketed, advertised, promoted and developed by OIDPL independently. The parties undertook to construct, develop, market and sell the Projects allocated to them independently and none of them shall interfere in any manner in the execution of projects exclusively allocated to individual party, The Respondent has no concern whatsoever with responsibilities/liabilities arising out of such projects, which were allocated to OIDP. Inadequacies, if any, in the electrical infrastructure in those other projects, are to be dealt by OIDPL and not Respondent and any demand notice issued by Petitioner to the Respondent in regard to such other projects, are erroneous as the same are not the responsibility/liability of the Respondent.
   b) As far as Project namely, 'Orchid Belmonte', is concerned, it is submitted that a sanction of 2544 KW with CD 2800 KVA on 11KV supply with applicable ILT/Indl. Tariff was granted to Respondent and consequently electricity connection was released for the said Project, being developed by Respondent on Golf Course Road, Sector 53, Gurugram. The residents of the said project have never faced any shortage/inadequacy of supply of electricity. The said project stands completed since long time. Occupation Certificate regarding the said project stood received vide Memo dated 10.06.2010 and dated 13.09.2010, followed by Completion Certificate which was received vide Memo dated 24.06.2011. The said project stands validly handed over to 'Vipul Belmonte Apartment Residents Association' vide 'Handover and Take Over Agreement' dated 04.02.2015, and as such, no liability regarding the said project can be said to be attributed to Respondent.
   c) similarly, as far as the project namely Maxworth Marketing Pvt Ltd (Vipul Green), a residential complex situated at Village-Teekri, Sector 48, Gurugram, is concerned, a sanction of 3933 KW with CD of 4370 KVA on 11 KV supply with applicable bulk supply tariff was granted to the Respondent on dated 04-04-2005 and electricity connection was released

for the said Project. The residents of the said project have never faced any shortage/inadequacy of supply of electricity. The maximum demand reached till date is 1741.6 KVA against the sanctioned CD of 4370 KVA which is only 40% of the total sanctioned CD. Occupation Certificate regarding the said project stand received on dated 04.03.2008, and dated 22.06.2010 and dated 14.01.2011, dated 29.12.2012 and dated 15.05.2013. The said project stands validly handed over to 'Vipul Greens Residents Welfare Association' vide letter dated 01.04.2018 and as such, no liability regarding the said project can be attributed to Respondent.

d) As far as the project Tatvam Villa (Part of Vipul World), is concerned, towards revised total demand of Rs. 999.20 lakhs, located in Sector 48, Gurugram, Bank Guarantee for Rs. 2,50,00,000/- valid upto 22.09.2024 Rs. 7,49,20,000/- valid upto 06.10.2024 stand submitted by Respondent. No direction, as has been sought by the Petitioner, for furnishing of the Bank Guarantees in order to cure the alleged inadequacies, , The load of the project listed at Serial no.4 in Annexure P-12, namely Maxworth(Vipul Green) is stated to be 5668.59 KVA and as per norms laid down by Petitioner, the same falls under the category of 33 KV level. In view of this, it is humbly submitted that the infrastructure created for Tatvam Villa (Part of Vipul World) can easily support the load requirement for Maxworth Marketing Pvt Ltd (Vipul Green) as well.

e) The total load for both the projects comes out to be 18 MVA which is much lesser than the installed capacity of 25 MVA, the load requirement for Maxworth Marketing Pvt Ltd (Vipul Green) can be met through infrastructure installed in Tatvam Villa (Part of Vipul World) which will also prevent unnecessary hazardous creation of 33 KV level sub-station. Respondent has already identified land admeasuring 958.807 sq. mtrs. (0.236 acres triangular in shape), located within the Project land of Tatvam Villa (Part of Vipul World), earlier earmarked for creation of crèche but now approved by the DTCP for the creation/construction of 33 KV substation. Petitioner Suitability Committee Team had visited the site on 20.07.2022 and a suitability report had also been submitted for further recommendation of the same to higher authorities, subject to fitment of the equipment and approval of GELO by competent authority. Respondent has sought Change of Land Use of the land, as described above, from Crèche to 33 KV HT substation and in-principle approval for the request of Change of Land Use made by Respondent, was being considered as conveyed vide Memo dated 17.02.2023.

f) That as far as project Inderprastha, is concerned, Respondent is involved in no way with the said project as on the present date. The said project has been developed by Vipul Trade Centre Developers Pvt. Ltd. Respondent was only entrusted with the responsibility of marketing the said project and has no obligations/liabilities towards electrical infrastructure inadequacy, if any, in the said project

2. The petitioner DHBVN has submitted as under:

a. The Respondents contends that one Orchid Infrastructure and Developers (P) Ltd. ("OIDPL") and the Respondent had jointly pooled in resources for development of real estate projects. However, due to differences both the Developers split the projects created by them through a mutual understanding. A Memorandum of Understanding ("MOU") is merely statement of understanding between two or more parties which when made has no enforceability in the eyes of law as such an agreement has no intention to create a legal bond between such persons. It is well established rule of law that all contracts are agreement, but all agreement are not contracts. A contract is valid if it fulfils all essential ingredients mentioned under section 10 of Indian Contract Act, 1872. A nomenclature of a contract or an agreement is not an index to determine the validity or invalidity of the same. Therefore, an agreement to be a MOU does not explicitly denote that such contract is non-binding and to prove a MOU be binding, it essentially covers the following: -

A MOU must fulfil all ingredients of section 10 of Indian Contract Act.

A MOU must compel the other person to oblige to the same and breach of such MOU will be treated similar to that breach of contract.

The use of words 'may', 'shall', 'would be' and 'should be' are important to while interpreting the construction of any document. The use of words shall, would, should, instead of may, can, might are of superior nature and bind the acts which follow after such words. If the MOU fulfils the conditions as laid down under section 10 of the Indian Contract Act, such MOU should be treated as a contract as defined under section 2(h) of the Indian Contract Act and hence, giving it a legal force.

The clauses in the MOU categorically specifies the conditions between the parties for which the MOU was made. The MOU relates to jointly pooling of the resources and the energies between the parties. The MOU only envisages for the procurement, acquisition, development, promotion and sale of the various real estate projects agreed between the parties i.e., Vipul and Orchid. It is noteworthy that the MOU nowhere talks about the transfer of ownership between the parties, which implies that there is no sale/transfer of title between the parties. However, there is mention of indemnification in clause 3 which shows that Vipul and Orchid are under obligation to indemnify each other in case any liability of any nature is present. The liability of paying bank guarantee towards the inadequacy in Infrastructure is a statutory violation and querist is at its liberty to take the BG from Vipul if it fails to provide the BG for its project mentioned in the schedule of MOU. Similarly, the querist can demand the BG from Orchid related to its project as mentioned in Schedule of MOU. In terms of clause 3 of the MOU, querist can demand the BG from either Vipul or Orchid if either of them fails to provide the BG under their respective projects. Further under Clause 5 of the MOU, it is clearly the intent of the parties herein that are Vipul and Orchid that they have not given final legal shape to the MOU and same would be executed in due course of time. Relevant clause is reproduced below: -

"5. That both parties shall endeavour to give a final/legal shape to this broad understanding in a short span of time. As an intimal step, both parties are proceeding to execute general power to attorneys in favour of nominee (s) of the concerned party with regard to projects specifically allocated to a particular party."

b. Therefore, it is prudent from the above quoted clauses read with judgements that Vipul and Orchid has agreed to take the liabilities and obligations towards each other's projects which is also mentioned in clause 3 of the MOU and it has a legal binding effect. The said clause covers the Project also and BG submitted by Orchid against the Project is admissible in law and can be taken into consideration towards the liability of Vipul. Further in terms of the sample flat agreement, it is clear that the sale consideration is being paid by the respective flat allotee to Orchid. Also, it is important to note that clause 3 uses the word "shall' which is of superior nature and is creating an obligation on the parties.
c. The license issued by DTCP is in name of Vipul, and there is no collaboration agreement being signed between Vipul and Orchid, however, the liabilities of Vipul can also be discharged by Orchid in terms of MOU read with the Sample Flat Buyer's agreement provided.
d. At the same time, clause 5 has to be read together and it is clear from said clause that final terms and conditions have not been signed yet.
e. The separation between Vipul Ltd. and OIDPL has no bearing on the responsibility of the Respondent as the original Electrification Plan for the entire scheme of was approved by DHBVN in the name of Vipul Ltd. (Respondent herein).
f. belongs to Vipul Limited. Respondent has lied through its teeth in making the averment that the Inderprastha Project) does not belong to it. Further the Respondent has failed to justify this averment.
g. Regarding Inderprastha Project, the license dated 19.02.1999 had been granted to one M/s Landmark Suit Pvt. Ltd. by DTCP for setting up a commercial colony at village Fazilpur Jharsa, Disrtict Gurugram. The sanction issued for this commercial colony was under the name of "Inderprastha". In fact, the above-mentioned license has been signed by the authorised signatory for Inderprastha Premises. M/s Landmark Suit Pvt. Ltd has been amalgamated with Vipul Limited in 2009. Vide order dated 04.08.2009, the Hon'ble Delhi High court in Company Petition No. 09 of 2009 sanctioned the Scheme of Amalgamation wherein M/s Landmark Suit Pvt. Ltd. was proposed to be amalgamated with Respondent. Therefore, Inderprastha is Respondent's project.
h. The Commission in PRO 48 of 2020 has settled the law, that as per relevant Regulations, it is obligatory on part of the "License Holder" to deposit requisite bank guarantee for development of electrical infrastructure. It has also held that approval of beneficial interest by DTCP does not absolve the license holder from creation of adequate infrastructure.

i. It is apparent from the above-mention order that the creation of electrical infrastructure is the sole responsibility of the license holder. Any part completion certificate issued by DTCP does not absolve them from creation of inadequate infrastructure in the entire subject area.

3. After going through the submissions of both parties, the Commission observes that the respondent Developer is fully responsible for creation of adequate electrical infrastructure for all the Projects enlisted in the table annexed as Annexure P-12 to the Petition as the license for projects at Sr. No. 1to 5 was issued in its name and the electrification plan was approved accordingly. The project at Sr. No.6 also belongs to the respondent as M/s Landmark Suit Pvt. Ltd (to whom the license for the project under the name Inderprastha was granted in 1992) has been amalgamated with Vipul Limited in 2009. (Vide order dated 04.08.2009, the Hon'ble Delhi High court in Company Petition No. 09 of 2009 sanctioned the Scheme of Amalgamation wherein M/s Landmark Suit Pvt. Ltd. was proposed to be amalgamated with Respondent.)

Obligation arising from applicable load norms

4. The petitioner has submitted that the Respondents are obligated to erect the electrical infrastructure in compliance with the load norms that exists on date. Hence, the averments made by the respondent regarding maximum demand, lack of shortage in the project areas, or handing over the project to RWA is irrelevant to the matter at hand and does not absolve the Respondent from their obligation to develop adequate infrastructure. The responsibility is of the developer until the NOC regarding the adequacy of the electrical infrastructure in the project is issued by DHBVN. Due to rampant urbanization, the electrical infrastructure developed by their respective builders / developers started proving to be inadequate causing a lot of problems for the consumers like frequent power cuts, breakdowns, poor voltages, and ultimately putting a lot of pressures on the existing electrical transmission and distribution infrastructures of the licensee. S. 46 of the Electricity Act, 2003 authorizes a distribution licensee to charge from a person any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply of electricity in pursuance of section 43. Thus, the distribution utilities revised load norms from time to time calling upon the builders / developers to follow these norms and to create an electrical infrastructure adequate enough to cater to the electricity needs of their residents. However, majority of the builders / developers including the Respondent, whose electrification plans had been approved by the DHBVN way back, did not create adequate electrical infrastructure till date, with the result that most of the substations became overloaded. Thus, even when electricity has been surplus in Haryana, DHBVN was not able to either release new connections or to make more power available to its consumers.

5. Recently, Sales Circular was issued by the DHBVN, with the approval of the State Government, being Sales Circular no. D-24/2019 dated 27.06.2019 on the issue of assessment of inadequacy cost on account of deficient/ inadequate infrastructure created/ erected by the Developers, by amending

the sales Circular no. D-16/2017. Vide the said sales circular, it was decided as under:

"in case of any reduction or increase in load norms takes place at a later date which in turn results in decrease or increase in the amount of inadequacy as compared to the previous load norms, such changes in the load norms will be applicable retrospectively in all those cases which stand sanctioned prior to such revision but where the infrastructure is yet to be created. Such retrospective changes will be applicable in those cases also where the infrastructure according to old norms has been erected partially and the remaining infrastructure is yet to come up."

6. The inadequacy in the present case has been calculated as per the revised load norms in terms of the above-mentioned Sales circular along with D-21/2020 reflected in Annexure P-12 of the Petition. At this juncture, the Respondent herein has never challenged any of these Sales Circulars. Therefore, the respondent is estopped from raising any contention belatedly challenging the sanctity of these sales circulars or the calculation made pursuant thereto.
7. The Commission has already upheld in the order dated 20.02.2015 passed in HERC PRO No. 21 and 23 of 2013 titled as Ansal Buidlwell Vs. DHBVNL & ORs, that until the project is taken over by DHBVN, the developer is obligated to create/update the infrastructure as per the load norms prevailing on date. The said order has been challenged by the developer vide CWP No. 6460 of 2015 and 6452 of 2016 and the same are pending for adjudication. However, there is no stay on this order by the Hon'ble P&H High Court till date. Thus, at present, the order dated 20.02.2015 is occupying the field of law. The Respondent has neither challenged the sales circular, nor the notices issued by DHBVN and DTCP before any forum which means that the Respondent has accepted these calculations. Therefore, the Respondent at this stage is estopped from belatedly challenging its obligation in the present petition.
8. On 17.05.2022, a notice was issued by the petitioner to the respondent for submitting bank guarantee amounting to Rs. 18.63 Cr. against inadequate infrastructure. In response to this, the Respondent vide letter dated 06.06.2022, requested DHBVN to issue notice for submission of bank guarantee separately for all projects. Accordingly, DHBVN issued a revised notice dated 28.06.2022 for the project named Tatvam Villa/Vipul World for furnishing of bank guarantee amounting to Rs. 10.63 Crores. The Petitioner further amended the amount of Bank Guarantee to be furnished to Rs. 9.99 crores.
9. The commission observes that a Committee of Nigam's officers was constituted in 2019 to reassess the cost of inadequacies due to revision in load norms in 2017 as per Sale Circular D-16/2017 and accordingly the benefit of reduction in load norms has been extended to the developers. M/s Vipul Ltd. was to submit a BG of Rs.27.95 Cr. for overall inadequacies in its project. This is coherent with the findings of this Commission in its Order dated 20.02.2015 wherein it was held that electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if, during the course of development by the developer/agency, the norms of calculating

ultimate load are revised. Relevant findings from the said order reads as under:

Whether the electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if, during the course of development by the developer/agency, the norms of calculating ultimate load are revised?

…

The Commission observes that the load norm primarily determines the load that would expectedly come up on the transmission and distribution system at any point of time according to which the minimum capacity of infrastructure to be created is determined in order to ensure uninterrupted and quality power to the consumer. Accordingly, the load norms have been devised and are reviewed from time to time with increase in consumption pattern to ensure that the builder/developer whether private or the Government, installs adequate electrical infrastructure for the residents of the area to cater to their electricity needs and the usage pattern.

The Commission, thus, hold that the electrical layout plan and the electrical infrastructure approved for a colony can be revised if, during the course of development by the developer/agency the norms for calculating ultimate load of the colony are revised. The Commission, therefore, answers the issue no.2 in the affirmative.

As per details of inadequacies as per the extant load norms furnished by the Petitioner vide its pleadings, it is clear that, inadequacy remains for which the petitioner has asked M/S Vipul Limited (the respondent) to submit a bank guarantee for the balance amount till the inadequacy is cured by the respondent Developer.

Recovery of expenditure incurred in curing inadequacies

10. In the order dated 20.02.2015 passed by the Commission the Commission has settled the principle regarding the obligation of the builder to cure the inadequacy in their projects. Therefore, the said order is not an order in persona but an order in rem which is applicable for all developers who have till date failed to cure inadequacies in electrical infrastructures of their colonies. The issue of inadequacies has time and again been brought before the commission in PRO 21 and 23 of 2013, PRO 68 of 2020, PRO 55 of 2022, etc. The Commission, after a detailed analysis of the provisions of the Electricity Act, 2003 and the extant regulations has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.
11. Under the Electricity Act, 2003, an electricity connection under S. 43 can only be provided when infrastructure required for supply of electricity is adequate to cater to the load of such consumer. Pertinently, proviso to S. 43 (1) of the Electricity Act, 2003 provides that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning within period "as may be specified by the appropriate

commission". Thus, if the infrastructure required as per the peak load requirement of an area is inadequate and DHBVN releases new connections and provides electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose.

12. In supplemental to the above S. 43, the Commission is empowered under Section 46 of Act to frame regulations to authorize a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and plant are defined under section 2(20) and 2 (22) of the Act. The relevant provisions are reproduced below:

"Section 43 (Duty to supply on request) 1. Save as otherwise provided in the Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premise, within one month after receipt of the application rearguing such supply. Provided that where such supply requires extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Section 45 (Power to Recover Cost) 1. Subject to this section, the prices to be charges by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license. … (3) the charges for electricity supplied by a distribution licensee may include (a)… (b) a rent or other charge in respect of any electric meter or electrical plant provided by the distribution licensee.

Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply." (emphasis supplied)

Section 2 (20) "electric line" means any line which is used for carrying electricity for any purpose and includes – (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity;

Section 2 (22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include- (a) an electric line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or (c) an electrical equipment, apparatus or appliance under the control of a consumer;"

An appropriate "Electrical Line" and "Electrical Plant" make part of the adequate electrical infrastructure that is required to achieve the ultimate load of a particular sanctioned area.

13. In terms of Section 46 of the Act, the Commission has framed the Haryana Electricity Regulatory Commission Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security Regulations, 2016 ("2016 Regulations"). The Regulation 4.1 of said regulation empowers DHBVN to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.1 reads as under:
"Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations."
14. Further Regulation 4.6 of the 2016 Regulations provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer.
15. Regulation 4.2.3 of Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 ("Supply Code") provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by this Hon'ble Commission under Section 46 of the Electricity Act, 2003. This stipulation is exactly same as that of Regulation 4.6 of the Duty to Supply Regulations.
16. In view of the foregoing provisions of law, it is apparent that the developers are liable to cure the inadequacies and settle the cost with the distribution licensee in terms of the prevalent norms and the regulations. However, time and again the developers /colonizers shy away from their responsibilities for installation of adequate electrical infrastructure as per the norms on one pretext or other and try to seek the completion of their colonies from DTCP without discharging their responsibilities of creating/installing the electrical infrastructure completely as per load requirement of these colonies. This ultimately affects the consumers of these colonies who are being left in lurch because of the non-compliance by the Developers.
17. In view of the above facts and discussions, the commission observes that the developer has failed to cure inadequacies as per norms. Therefore, the petition is disposed off with following directions to the Respondents:
    a) The inadequacies, amounting to Rs. 18.63 Cr. as established by the Petitioner, shall be cured by the Respondent within one year of this order.
    b) The monthly progress report of the work on curing of inadequacies will be submitted by the Respondent to the petitioner.

c) Requisite Bank Guarantee as per regulations shall be furnished by the Respondent to the Petitioner within 30 days.
d) The respondent Developer is ordered to pay ₹50,000/- Court Fee deposited by the petitioner along with ₹15,000/- towards litigation expenses to the petitioner within 30 days from the date of this order.
e) In case the Builder fails to comply with the above-mentioned timeline, the Commission will be constrained to initiate proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 against the defaulters and stringent action shall be taken for such willful and repetitive non-compliance.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12/12/2024.

Date: 12/12/2024 **(Mukesh Garg)** **(Nand Lal Sharma)**
Place: Panchkula **Member** **Chairman**