



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector - 4, Panchkula-134109
Telephone No. 0172-2572299; Website: - herc.nic.in
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(Regd. Post)

Appeal No. : 7/2017 (R)
Registered on: 05.09.2023
Date of order: 07.03.2024

In the matter of:

Appeal against the order dated 29.11.2016 of CGRF, DHBVNL, Hisar in case no. 1388 of 2016.

The Close North Apartment Owners Association, Nirvana Country, Sector 50, Gurgaon -122018 through its authorized representative Ms. Anjana Bali, President.

Appellant

Versus

1. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Head Office: Vidyut Sadan, Vidyut Nagar, Hisar -125005
2. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109.
3. The Chief Engineer 'Op', Delhi Zone.
4. The Superintending Engineer 'Op' Gurugram-II, 2nd Floor, Housing Board Complex, Saraswati Vihar, MG Road, Gurugram-122002.
5. The XEN (Operations), Sub Urban, Division Gurugram.
6. The SDO (Operations), S/D, Sector-31, Gurugram.

Respondents

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Shekhar Verma, Advocate

Present on behalf of Respondents:

Ms. Sonia Madan, Advocate

Shri Rajesh Kaushik, SDO 'Op.' Sohna Road, Gurugram

ORDER

- A.** Hon'ble Punjab and Haryana High Court in CWP No. 24461 of 2017 (O&M) passed order dated 03.08.2023, whereby the order dated 29.11.2016 passed by respondent No. 5 i.e. Electricity Ombudsman was set aside and the matter was remanded for fresh determination keeping in view the Regulations 21 & 22 of the HERC (guidelines for establishment of Forum and redressal for Grievance of consumers) and (Electricity Ombudsman) Regulation 2004. The parties shall appear before the Electricity Ombudsman on 05.09.2023 and thereafter appropriate proceedings in accordance with law shall be undertaken by the Electricity Ombudsman.

Both the parties attended the hearing on 05.09.2023 through video conferencing and requested for adjournment for 20 days. Acceding to the request, the matter was adjourned to 26.09.2023.

- B.** Hearing was held on 26.09.2023. Counsel for the respondent was present during the hearing through video conferencing. The counsel for the appellant vide email dated 26.09.2023 requested for short adjournment in view of strike by the bar counsel of Hon'ble Punjab and Haryana High Court. Acceding to the request, the matter was adjourned to 09.10.2023.
- C.** Hearing was held on 09.10.2023. Both the parties were present during the hearing through video conferencing. Both the parties agreed to sit together on 20.10.2023 at 10:00 A.M. in the office of respondent SDO to settle the dispute through mutual agreement. Accordingly, both the parties are allowed to sit together on scheduled date and time. The respondent SDO was directed to submit the report. The matter was adjourned to 25.10.2023.
- D.** The appellant represented to the respondent SDO vide letter dated 20.10.2023 having subject "Reconciliation meeting as per Hon'ble High Court order dated 03.08.2023 & Ombudsman instructions", the contents which are reproduced as under:

"In this connection we would like to submit that the issue relates to Test Report dated 20.12.2010 submitted by your department, which shows occupancy of only 116 residents in 8 Towers, where as the actual occupancy was 518 as per list of possessions in 14 Towers.

The calculation done by your department showing common area load for more than 15% is because of wrong & unsigned Test Report submitted by the contractor showing only 116 residents in 8 Towers. Also, the load of STP & club has also been considered in the common area where as they were not operative. The fact is that OC was granted for 10 Towers from Towers 1 to 8 and 16, 17 having 398 flats on 18.06.2010 by DTCP as per Deed of Declaration submitted by Unitech. There were occupants in other 4 Towers 9, 12, 14 & 15, but they were included in test report. The Electricity Connections were given to all the buyer having possession and were billed for the consumption by Unitech. A copy of Electricity Bill of Flat No. 1101 Tower 17 dated 08.01.2009 of the month of Dec. 2008 to show that this Flat was occupied but your test report not only ignored this Flat but the entire Tower 17. This clearly shows that proper verification was not done by the contractor while submitting the report. Certificate from Unitech dated 08.05.2017 confirming the number of tower 1 to

17 and power requirement of 5407 KVA giving details of electricity requirement of all flats and common area.

It will not be out of place to mention that Unitech applied to DHBVN for 5000 KVA connection, whereas only 1500 KVA connection was energized in 2010. Unitech on their part gave possession to the residents based on 5000 KVA. Unitech was managing the load till 2014 with DG sets to supply electricity to all occupants based on their application for 5000 KVA.

The Test Report dated 20.12.2010, in question, is totally unreliable, unverified, unsigned ignoring the facts of actual occupancy in the Complex The Close North. Thus, the domestic supply rates should have been charged instead of NDS rates charged in the bills from 2010. In view of above we request you to take necessary action to rectify the bills from 2010 based on Domestic Supply rates and refund the amount with interest to The Close North Apartment Owners Association.”

- E.** Hearing was held on 25.10.2023. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the appellant submitted that both the parties met on 20.10.2023 in the office of respondent SDO to settle the dispute through mutual agreement. The counsel for the respondent submitted that the appellant has provided a representation and requested for short adjournment to file reply. The respondent is directed to file the reply within a week time with advance copy to the appellant and the appellant may file rejoinder, if any, within 3 days thereafter. The matter was adjourned for hearing on 15.11.2023.
- F.** The counsel for the respondent SDO vide email dated 07.11.2023 submitted the reply, which is reproduced as under:
1. The present reply is being filed through Rajesh Kaushik (hereinafter referred to as 'DHBVN') (Respondent), who is competent to file the present reply as well as fully conversant with the facts and circumstances of the case on the basis of knowledge derived from the record. All submissions are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
 2. At the outset, it is submitted that the Close-North Apartment Owners Association (hereinafter referred to as "Appellant") has filed a present representation dated 20.10.2023 pursuant to the reconciliation meeting held between the parties as per Order dated 03.08.2023 passed by the

Hon'ble Punjab and Haryana High Court in the matter of *Close North Apartment Owners Association v State of Haryana and Others* bearing case no. CWP-24661 of 2017. It was the case of the Appellant before the Hon'ble High Court of Punjab and Haryana that Regulation no. 21 of Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004 (hereafter referred to as "HERC Regulations, 2004") mandates that the Hon'ble Electricity Ombudsman to initiate the proceedings for settlement of a complaint by mutual agreement and mediation. It is only in the event of the settlement not being arrived at that the adjudication under Regulation no. 22 of HERC Regulations, 2004 could be undertaken by the Hon'ble Electricity Ombudsman. In view thereof, the Hon'ble Punjab and Haryana High Court without going into the merits of the matter set aside the Order dated 29.11.2016 and further remanded the matter back to the Hon'ble Electricity Ombudsman for fresh determination in view of Regulations no. 21 and 22 of Regulation 22 of HERC Regulations, 2004. The relevant excerpts of the said Order dated 03.08.2023 passed by the Hon'ble Punjab and Haryana High Court are reproduced herein under for ready reference-

"Be that as it may, without going into the said controversy on merits at this stage, and taking into consideration that the contesting parties have no serious objection to the petition being allowed and the matter being remanded to the Electricity Ombudsman for adjudication in terms of Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004, the present petition is allowed. Order dated 29.11.2016 (received on 24.01.2017) passed by respondent No.5 i.e. the Electricity Ombudsman is set aside. The matter is remanded to the respondent No.5 for fresh determination keeping in view the Regulations 21 and 22 of the aforesaid Regulations of 2004. The parties shall appear before the Electricity Ombudsman on 05.09.2023 and thereafter appropriate proceedings in accordance with law shall be undertaken by the Electricity Ombudsman. In view of above, there is no occasion for adjudication of the other prayers that have been raised. The parties would be at liberty to seek redressal of their grievances by way of an appropriate petition."

(Emphasis Supplied)

3. The Appellant had filed a complaint before Ld. CGRF with a prayer for issuance of directions to the Respondents for making necessary correction in the sanctioned load category and apply correct bulk supply (DS) tariff instead of bulk supply (NDS) for the period 25.12.2010 to 24.09.2014. The

Ld. CGRF vide the Order dated 29.11.2016 in Case no. 1388 of 2016 decided as under-

"The Forum considered all the aspects of the case and framed following issues for decision.

1. *Whether Bulk Supply (DS) tariff is applicable in the case of the consumer from the DoC i.e., 24/12/2010 or some later date.*

The Forum noted that only partial load of 1500 KW with CD of 1500 KVA released in the first instance in the year 2010 as against the demand of consumer for 5407 520 KW with CD 5000 KVA due to system constraints. The respondent pointed out that load of lift, water pumps and fire fighting equipment was included by the applicant in the application itself in the load of common facilities. At the time of application, there were 116 flats in the society. Even if the loads of lift, water pumps and fire fighting equipments are included in the domestic load (85%), the total load of other common facility exceeds 15%. The Forum also agrees with the respondent's version that the occupancy of 508. No residential flats at the time of connection for which the petitioner's counsel produced list of Unitech customers data base cannot be relied after a period of 6 years as at that time of seeking connection the consumer had himself provided that there were 116 flats occupied. Therefore, the Forum agrees with the recommendation of the then XEN to change the connection under BS (NDS) category in the first instance in the year 2010.

However the DHBVN vide Sales Circular No. D-4/2013 has adopted HERC Notification dated 9/01/2013 on single point supply to residential colonies or office cum residential complexes of developers, Regulations which prescribe the detailed procedure for billing in these cases as per attached Annexure-4 of these regulations.

The Forum, therefore concluded that BS-NDS category tariff is applicable in the present case from the date of connection (DoC) to 8/01/2013. From 9/01/2013 duly adopted by DHBVN vide sales circular No. D-4/2013. The applicable category for billing for the period from 25/09/2014 onwards is bulk supply domestic (BS-DS) as already agreed by the respondent SDO in his letter No. 340 dated 27/06/2016.

2. **Rebate of 4% in case of supply at 11 KV:** *The respondent has not contended the benefit sought by the consumer. Hence the Forum decided that the rebate for single point supply at 11KV be regulated to the consumer as per HERC notification dated 9.01.2013 and adopted by DHBVN vide SC No. D-4/2013.*
3. **Interest on Security/ACD of the consumer:**

The respondent has not contended the relief sought by the consumer on this account. Hence the Forum decides that interest on ACD as per applicable Nigam/HERC rules and prescribed rates from time to time be allowed to the consumer through the bills within a month's time. "

(Emphasis Supplied)

4. The aforesaid Impugned Order dated 29.11.2016 was further upheld by the Hon'ble Ombudsman vide Order dated **08.05.2017** in Appeal no. 7/2017 filed by the Appellant against the Order dated 29.11.2016. The relevant excerpts of the Order dated 08.05.2017 are reproduced herein under-

"The Applicant submitted that an appeal was filed with the CGRF, Hisar which was partially accepted vide impugned order dated 29.11.2016. The dispute in the present case is that the Respondent DHBVN had charged for BS(NDS) tariff instead of BS/DS tariff. The Appellant stated that the Respondent erroneously levied non-domestic charges considering the connected loads of lift, fire fighting equipment and water supply pump etc. During the course of proceedings before the Forum, the Respondent has agreed to charge domestic supply charges for the period 25.09.2014 onwards but the dispute for the period 25.12.2010 to 24.09.2014 is still pending.

The Forum, in its order dated 29.11.2016, had also mentioned that the consumer had himself provided the occupation of 116 flats. The statement by the Appellant that the load verified by the officer of the Respondent Department as per the Test Report is not correct, cannot be relied upon at this belated stage as the Appellant had been paying the electricity bill regularly at Bulk Supply NDS tariff, as per the test report verified by the XEN on 20.12.2010. It is also observed that the remarks dt. 20.12.2010, on the profoma-schedule of energy consuming operators to be connected "Detailed enclosed, load -1500 KW with CD 1500 KVA and T.R verified as per the details of the load attached" have been acknowledged by the electrical contractor. Moreover, the matter was never taken up with the Respondent by the Appellant during the disputed period. It has also been observed that on the Service Connection Order dated 20.12.2010, remarks have been given that the T.R has been verified by the XEN with a note that BS/NDS tariff should be charged and the same has also been acknowledged by the consumer.

Keeping in view of the above, material on record and written/oral submissions made by both parties, I am of the view that the decision of the Forum "that BS-NDS category tariff is applicable in the present case from the date of connection (DoC) to 8/01/2013. From 9/1/2013 to the date of release of balance load i.e., 25.09.2014, the billing of the consumer required to be done as per Annexure-4 of the HERC notification dated 9.1.2013 duly adopted by DHBVN vide sales circular No. D-4/2013. The applicable category for billing for the period from 25.09.2014 onwards is bulk supply domestic (BS-DS)" is in order and upheld.

As stated by the Appellant in the written submissions that the SDO 'Op' has adjusted the amount of Rs. 59,88,491/- vide SC & AR No. 379/10R dated 12.04.2017 appears to be incorrect. In case the Appellant is not satisfied with the implementation of the Forum's orders regarding refund/adjustment of the amount by the respondent, the Appellant is at the liberty to take up the matter with

*the appropriate authority as per the provisions of the Regulations
HERC Regulations no. 37/2016. ..."* (Emphasis Supplied)

4. By way of representation dated 20.10.2023, the Appellant has asked for rectification of the bills from 2010 based on Domestic Supply rates and refund of the amount along with the interest. In this regard, the Appellant had put forth the following averments-
 - a. The Appellant disputed Test Report dated 20.12.2010 alleging it as unsigned, unreliable, unverified report which does not take into account actual occupancy in the complex 'The Close North'. It is the case of the Appellant that the said Test Report depicts occupancy of only 116 residents in 8 Towers; whereas the actual occupancy was 518 as per list of possessions in 14 Towers. The electricity connections were given to all the buyers having possession and were billed for the consumption by Unitech. However, the said Test Report had ignored the entire Tower no. 17.
 - b. The calculation done by the Respondent showing common area load for more than 15% is therefore, incorrect and flawed. The appellant had also taken into account the load of Sewage Treatment Plant (STP) and club in the common area even though they were not operative.
5. Before advertng to the foregoing issues on merits, the Respondent sets out hereunder a brief background of the matter for adjudication of the present representation-
 - a. The Appellant had applied for an electricity connection of 5407.520 KW with CD 5000 KVA load in the name of Close North Apartment Owners Association, Sector-50, Gurgaon. On 25.07.2008, the Respondent sanctioned the bulk domestic load of 5407.520 KW with CD 5000 KVA.
 - b. A partial load of 1500 KW at 11 KV voltage level through an independent feeder from 66KV S/Stn, Sector 52, Gurgaon was approved by the Respondent vide memo no. 15/WO/DRG-1453/GGN dated 30.11.2010 as a stop gap arrangement till the commissioning/energisation of the proposed 66 KV S/Stn, Sector 47. The same was energized on 24.12.2010 and the full load of 5407.520 KW, 5000 KVA was release on 25.09.2014.

The relevant connection details are tabulated herein under for ready reference-

Connection Details	
Tariff Category	BLDS
Supply Voltage (kV)	11 KV
Sanctioned Load (KW/KVA)	5407.520KW/5000KVA
DoC/DoE of partial load 1500 KW	24.12.2010
Full sanctioned load released (5407.520 kw)	25/09/2014
Meter Make/Meter Type	DLMS/HT-MTR
Meter Ownership/MDI Meter	Nigam meter

- c. The Appellant on 20.12.2010 submitted the Test Report qua the approved partial load of 1500 KW. The said Test Report was further verified by the Respondent as per the details of the load offered. Considering the said details, it was observed by the Respondent that BS-NDS tariff is applicable *inasmuch as* common load was more than 15%. The said observations of the Respondent were not objected to by the Appellant. The relevant excerpts of the said report is reproduced herein under for ready reference-

Tower no.	Particulars	Total Load in Common Area (in KW)
1	Lifts, 3TR Cassette unit, CGL Lights 2x18 W; CFL Bulk Head 1x13 W; 1x18 W Mirror Lights; Wall Mounted Fixture and Light Plug Point	40.06
2	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	44.75
3	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	38.002
4	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	43.31
5	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	40.6
6	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	44.75
7	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	40.6
8	Lifts, 3TR Cassette unit, 5.5 TR Cassette unit, CFL Lights 2x18 W, CFL Bulk Head 1x13 W, 1x18 W Mirror Lights, Wall Mounted Fixture and Light Plug Point	43.598
OTHER DETAILS		
Total load of firefighting and water supply		150.15
Total load of Basement Area		55.76
Total load of Sewage Treatment Plant Load (STP)		40.00
Total Load of 26 nos. of surveillance cameras		0.03

- d. As per the Sales Circular No. D-7/2010 dated 01.10.2010, the Bulk Domestic Supply is available for the Colony/Group Housing Society

having minimum 70 KW load out of which residential/domestic load should be at least 85% and the balance 15% load shall be for common facilities and no industrial activity will be permitted. It has been further clarified in the Circular that the domestic load shall include the connected load of lifts, water supply pumps and firefighting water pumps and shall form part of 85% of the total connected load. The relevant excerpts of the said Sales Circular are reproduced herein below for ready reference-

“Clause 1. DOMESTIC SUPPLY (DS)

(I) Availability

Available to consumers for lights, fans, domestic pumping sets, lifts for use by residents, fire hydrants and house-hold appliances in the following premises:- (i) Single private house/flat, (ii) Hostel of Educational Institutions (including Mess/ Canteen), (iii) Working Women's hostels run by Red Cross and Social Welfare Department, (iv) Anganwadi Workers' training Centers set up by Indian Council for Child Welfare, (v) Places of public worship such as Mandirs, Masjids, Churches, Gurdwaras and (vi) Village Chaupal owned by Gram Panchayat / Communities.

2. NON-DOMESTIC SUPPLY

(i) Availability

Available to consumers for lights, fans, appliances and small motors to all nonresidential premises such as:-

(i) Business houses, (ii) Cinemas, (iii) Clubs, (iv) Public offices, (v) Educational Institutions, (vi) Hospitals, (vii) Hotels

(ii) Clause 8. BULK DOMESTIC SUPPLY

(i) Availability

Available for the Colony/Group Housing Society having minimum 70 KW load out of which residential / domestic load should be at least 85% and the balance 15% load shall be for common facilities and no industrial activity will be permitted. The colony / Group Housing Society shall be bounded by boundary wall or fence and should have only secured entry points for ingress and egress. A single point electricity connection shall be provided at the H.T. (11 kV) level (or higher) and further distribution within shall be owned and managed by the Colony / Group Housing Society.

(ii) Character of supply A.C, 50 Cycles, 3 phase supply at 11 KV or above voltage level at single delivery point.

NOTES

(a) Domestic load shall include the connected load of lifts, water supply pumps and fire fighting water pumps and shall form part of 85% of the total connected load.

- (b) *No industrial activity shall be permitted inside the complex.*
(c) *All other terms and conditions as applicable to Bulk Supply category shall also be applicable to the Bulk Domestic Supply category."*

(Emphasis Supplied)

- e. In October 2014, the energization of 66kV S/Stn Sector-47 was completed in October 2014. Subsequent to which, the demand notice was issued to the Appellant vide letter dated 07.04.2014 for full load release from 1500 KW to 5407 520 KW. In compliance to the said demand notice, the Appellant submitted the Test Report dated 08.07.2014 along with the detail of common load which was less than 15% of connected load. Considering the details submitted by the Appellant, the Respondent billed the Appellant as per Bulk Supply-DS tariff.
- f. The Order of the CGRF dated 29.11.2016 was duly complied with by the Respondent. With effect from 09.01.2013, the billing has been rectified as per Sales Circular D-4/2013 and the category of the tariff applicable is bulk supply domestic (BS-DS).
- g. Further the Respondent in compliance with HERC Order 09.01.2013 had adjusted an amount of Rs. 59,88,491/- vide SC & AR no. 379/10R dated 20.04.2017 towards interest on ACD & 4% rebate in case of supply at 11KV. Bill for the period April 2017 to May 2018 has been corrected by the Respondent vide sundry no. SC&AR 43/20R dated 20.07.2018 and accordingly a sum of Rs. 10,56,508/- was credited to the Appellant in month of June '18 and July' 18.
- h. It is the case of the Appellant that Bulk Supply -DS tariff should be made applicable from the date of connection i.e. 24.12.2010. In view of the foregoing factual position, the dispute between the parties as on date is with respect to applicability of tariff from 24.12.2010 till 09.01.2013. While the Respondent has applied NDS tariff based on own test report of the Appellant, the Appellant however, is claiming DS tariff. The said prayer of the Appellant is untenable and not liable to be granted for following reasons -

The efficacy and cogency of the test report dated 20.12.2010 is valid and well-founded and presumption to the contrary is not tenable -

6. With respect to the grievance of the Appellant that the Test Report dated 20.12.2010 depicted the occupancy of only 116 residents in 8 Towers;

whereas the actual occupancy was 518 as per list of possessions in 14 Towers thereby decreasing the proportion of common load is incorrect, not based on cogent evidence, vague and the claim is apparently an afterthought. In this regard, it is humbly submitted that at the time of application, the Appellant had themselves mentioned that there were 116 flats in the society. The Test Report dated 20.12.2010 is voluntary acknowledgment of the existence of a specific fact. Any statement to the contrary after 6 years cannot overturn the statement made by the Appellant society and the applicability of tariff based on the same more so when the mere occupancy is not a conclusive proof to establish the load utilization. The Respondent had calculated the tariff as per BS-NDS tariff category on the basis of the details of the load submitted by the Appellant themselves which also has been verified by the Respondent. The purported list now adduced by the Appellant in support of their claim depicting actual occupancy of 518 (*Annexure-1*) cannot be relied upon at such a belated stage. From the record, it is amply evident that no such list or other documentary evidence was submitted the Appellant at the contemporaneous point of time disputing the observations made by the Respondent on Test Report dated 20.12.2010. The Appellant never raised any dispute with regard to the aforesaid Test Report until 2016 and continued to pay bill on the basis of BS-NDS tariff category.

7. Even otherwise, the aforesaid purported list is a tabulated statement and merely depicts that name of the flat owners and the corresponding date of possession. The alleged list cannot be admitted into evidence in the absence of any concrete and substantial proof, such as the number of the units consumed by each flat owner or disclosures from the apartment owners regarding their true occupation. In the absence of the same, the said list (*Annexure -1*) is not worthy of any credence. Suffice it to say that, the unsubstantiated claim and afterthought claims have no credence in the eye of law. In view of the foregoing, it is also imperative to highlight the letter dated 01.12.2010 wherein the Appellant had themselves mentioned that "*the residential group complex is partially occupied and we are running the DG Sets to feed the power supply to the complex.*" The Appellant has also placed reliance upon the Electricity Bill dated 08.01.2009 (*Annexure-3*) which pertains to Tower-17. The said bill alone does not establish the total load utilization in the year 2010 and the

veracity and authenticity of the said bill is being disputed in the absence of the corroborative evidence.

8. Reliance in this regard is placed upon the judgment of the Hon'ble APTEL in the matter of *Punjab State Power Corporation Limited -v- Punjab State Electricity Regulatory Commission* dated 22.04.2015 in Appeal No. 174 of 2013 wherein while considering the delay in providing complete documents, *inter-alia*, the Hon'ble Tribunal held as under:

“29. In the remand order, the State Commission after having scrutinized the necessary documents allowed a reduction of Rs. 3.48 crores from the net tariff income of the utilities for FY 2007-08 and Rs. 32.87 crores from non-tariff income for FY 2008-09 and decided that the effect of this order will be given in the tariff order of FY 2013-14. The Commission felt that carrying cost cannot be allowed for the entire period and has restricted it to a period of 9 months i.e. three months for FY 2012-13 and 6 months for FY 2013-14 since recovery of this amount will be available to the utility from the increased tariff determined for FY 2013-14, because of non production of evidentiary documents was on account of due to delay on the part of the Appellant. The State Commission has given detailed order explaining the delay in providing the documents by the Appellant. The Tribunal in its order dated 18.10.2012 has also observed that the Appellant had not produced the relevant documents for FY 2007-08 and 2008-09. Therefore, we feel that there is no infirmity in not allowing the carrying cost for the period of delay caused by the Appellant in supplying requisite information to the State Commission. We find no merit in the arguments of the Appellant that the carrying cost should be allowed due to change in procedure adopted by the State Commission. We feel that complete documents were not available for deciding the issue by either of the two procedures. Accordingly, this issue is decided against the Appellant.

30. Summary of our findings:

(iv) Interest on delayed recovery of interest on SPV loans: We find no merit in the arguments of the Appellant that the carrying cost should be allowed due to change in procedure adopted by the State Commission. We feel that complete documents were not made available before the Commission for deciding the issue by either of the two procedures. The carrying cost for the delay on the part of the Appellant cannot be passed on to the consumers. Accordingly, this issue is decided against the Appellant.”

(Emphasis Supplied)

9. Thus, in the light of the foregoing submissions, it is not wrong to suggest that the contention of the Appellant as regards the Test Report dated 20.12.2010 being incorrect is not tenable and liable to be rejected.

The computation with regard to the common area load is accurate and based on the details provided by the appellant-

10. It is the case of the Appellant that the Respondent has done wrong calculation for common load area and had taken into account the load of Sewage Treatment Plant (STP) and club in the common area even though they were not operative.
11. At the outset it is submitted that the Sewage Treatment Plant (STP) and club falls under the ambit of the 'common areas' and the same is amply evident from the definition of "Common Facilities" as provided in the Sales Circular No. D- 4/2013 dated 09.01.2013 which provides as under-
"Common Facilities" means the common recreational facilities/services such as club/common room, GHS/Care taker office, street lighting, sewerage treatment plant, ventilation system, common/parking areas, dispensary, school, convenience stores/shops etc. for the residents of a Housing Society/Colony;"
(Emphasis Supplied)
12. Further the contention of the Appellant that the Sewage Treatment Plant (STP) was inoperative is erroneous in view of the fact that the same was operative bearing the total load of 40.00 KW. The Appellant had themselves included the loads of lift, water pumps, water supply load and fire fighting equipments under the common load. Further, even if the loads of lift, water and fire fighting equipments are included in the domestic load (85%) then also the load of other common facilities exceeds 15%.
13. Further the Appellant has also averred that the NDS tariff can be applied only on that proportionate consumption of common facilities which exceeds 17.64% of the domestic load or 15% of the total load. In this regard, the Respondent submits that the point of charging NDS tariff only on that part which is in excess of 15% was circulated in 2013 whereas the connection to the Appellant was released in December 2010. Suffice it to say that, the Appellant has rightly computed the common load area in terms of Sales Circular No. D- 7/2010.

C. CLAIM OF THE APPELLANT IS BARRED BY LAW OF LIMITATION-

14. As elucidated hereinabove, Appellant has by way of present representation as sought rectification of bills from 2010 and further prayed for the refund along with the interest. The said claim preferred by the Appellant is time-barred in view of the fact that the complaint could be filed before the CGRF only in those cases whose date of cause of action is made within 2 years as per the HERC Regulations in vogue. As per section 42(6) of the Electricity Act, 2003, a forum is established for the redressal of grievances of the consumers in accordance with the guidelines as may be specified

by the State Commission, and accordingly, Forum and Ombudsman Regulations have been notified by HERC. As per Regulation No. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen. It is not the case of the Appellant that the applicable tariff did not come to their notice. The Appellant cannot invoke the provisions of the Electricity Act, 2003 to raise a stale and time-barred money claim. Thus, the claim of the Appellant is liable to be rejected on this short score as well.

15. Reliance in this regard, is placed upon the judgment of the *Hon'ble Delhi High Court titled North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. 2012 (129) DRJ 644*, wherein the Court rejected the claim raised by the Appellant qua overcharging by the Discom amounting to Rs. 23,90,162.51 being time barred. The Court categorically observed that the cause of action in the present case arose in the year 1999. However, the Appellant filed the complaint before the forum after the period of 7 years i.e. in 2009 and the same is therefore, barred by limitation. The relevant excerpts of the same are reproduced herein under for ready reference-

12. *It is also relevant to note that the cause of action for filing a claim of recovery against the petitioner/NDPL had accrued in favour of respondent No. 1/Consumer way back in the year 1993. Even if, the period of three years is reckoned from the year 1999, i.e., the year when the connection was apparently converted from LIP to SIP, it would have taken the respondent No. 1/Consumer upto the year 2002 and not beyond that. Respondent No. 1, however, approached the MRTP Commission after a period of six years therefrom, i.e., in the year 2008 and it approached the CGRF after a period of seven years therefrom, i.e., in the year 2009. While the complaint of the respondent No. 1/Consumer filed before the MRTP Commission was rejected with liberty granted to it to approach the appropriate forum under the Electricity Act, it is a matter of record that respondent No. 1 approached the CGRF only in the year 2009, after about six months after the order of the MRTP Commission was passed. Even in the complaint filed before the CGRF, respondent No. 1 had again claimed that the period of limitation stood extended in its favour by predicating its case on the letter dated 21.07.2005 addressed by the petitioner to it.*

13. *The fact remains that for the purpose of calculating limitation, only the complaint filed by the respondent No. 1/Consumer is required to be examined and **a perusal of the application filed by it before***

the CGRF reveals that the respondent No. 1 had itself acknowledged in paras 27 and 30 thereof that the petitioner/NDPL had converted the connection from LIP to SIP in March, 1999 and it had installed a new meter on the basis of completion of commercial formalities, that had taken place long ago. In such circumstances, the complaint of respondent No. 1/Consumer was not maintainable before the CGRF, the same being hopelessly barred by limitation.”

(Emphasis supplied)

In the light of the foregoing submissions, the contentions of the Appellant with respect to Test Report dated 20.12.2010 and the calculations of tariff based on the said report should be rejected at the threshold. Since the Order dated 29.11.2016 of the Ld. CGRF stands complied, the present appeal shall be dismissed.

- G.** Hearing was held on 15.11.2023. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the appellant submitted that no reply has been received. Per contra, the respondent SDO submitted that reply has been sent through email. The respondent SDO was directed to send the reply again. The appellant may file rejoinder, if any, within week time, with a copy to respondents. The matter was adjourned for hearing on 05.12.2023.
- H.** Hearing was held on 05.12.2023. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the appellant requested for 10 days adjournment as instructions are awaited from the client and further, requested to fix the next date of hearing before 25th December, 2023 or in the first week of January, 2024. Allowing the time, the appellant was directed to file response, if any, within 10 days with an advance copy to the respondent. The matter was adjourned to 20.12.2023.
- I.** The counsel for the appellant vide email dated 19.12.2023 and by hand on 26.12.2023 has submitted the rejoinder, which is reproduced as under:
1. That the final order on Ombudsman Appeal 7/2017 was passed on 08.05.2017. On the same day TCNAOA obtained a certificate from Unitech Ltd. (Developer) providing ‘schedule of energy consuming apparatus to be connected giving Tower wise electrical load’ (Electrical *Infrastructure*- as defined by HERC/ 27/2013) while applying for sanction of 11KV Single point power supply of 5000 KVA in April 2008.

2. That "Infrastructure" means the entire electrical distribution network with connected load within the premises of the Group Housing Society/Employers' Colony.
3. That Unitech, developer of 'The Close North' on completion of construction of the complex in April, 2008, had applied for sanction of Single Point of 11KV 5000KVA supply vide A & A No. 4723/BS(DS) dated 25.04.2008. Sanction was issued vide Memo No.4-WO-DRG-1453-GGN daed 25.07.2008. It was conveyed in the Sanction order by CGM(OP) that BS(DS) supply was approved.
4. That the Colonizer has certified that the same Load Sheet (Electrical *Infrastructure*) was provided again to the Respondent-DHBVN for generating 'Contractor Test Report & Board Installation Order'. This Test Order dated 08.07.2014 was approved by XEN and 11 KV 5000 KVA power supply to the complex was energised by DHBVN on 25.09.2014.
5. That Unitech, the developer has further certified that the Tower & Flat wise load (Electrical *Infrastructure*) projected in the Test Report dated 08.07.2014 are the sum total of flats in that particular tower and break up of tower wise flats was also submitted to DHBVN in April, 2008. Thereby meaning that the electrical Infrastructure network of the premises provided at the time of applying for sanction by M/s Unitech is the same as Infrastructure inspected by DHBVN under Test Report dated 08.07.2014 approved by XEN.
6. That the above certificate from Unitech was forwarded to the Ombudsman and DHBVN vide email dated 08.05.2017, the same day when final order on the Appeal was issued by the Ombudsman. But this certificate was not considered as it was received late at their office.
7. That the provisioned Electrical *Infrastructure* in April 2008 and the *Infrastructure* provided for the Test Report dated 08.07.2014 are the same. If it is so, how come different electrical Infrastructure with different Load Structure has been provided for by the Contractor and approved by DHBVN vide their Test Report dated 20.12.2010 just for energising 11 KV 1500 KVA with different point loads for same type of flats in the same premises of GHS (The Close North apartments).
8. That basis of 'Basic load calculation' for any flat or house is based on number of (i) Light points x (0.04 W/per point) + Fan Points x (0.06 W/point) + (iii) Light Points x Plug (0.02 W/point) + Power point Plugs x

(0.50 W/point). Total of these load forms the total load of a flat or house). Total of all these points is same for same category of flats having same layout and same area in SFT. But the number of points shown for the same category of flat in the Test Report dated 20.12.2010 and in the Test Report dated 08.07.2014 are entirely different.

9. That with Load schedule provided in 2008 and the DHBVN Test report dated 08.07.2014 being the same, the Test Report dated 20.12.2010 before energising 1500 KVA load is absolutely incorrect as: -

(i) A total of 5 categories flats have been constructed in the TCN complex having different flat Loads as shown in TR-08.07.2014. Whereas, TR-20.12.2010 lists load only 3 categories in all the towers in TCN Complex.

(ii) The number of electrical points (like Light Point, Fan Point, Light Plug Point and Power Plug Point etc. having different standard wattage per point for calculating total flat / house load) under each Category of flat is completely different in both TRs. Not even one flat load of TCN matches in the both TRs and both TRs have approved by DHBVN at XEN level. If the court desires, a committee of representatives can visit the premises of 'The close North', physically count the points and confirm that the Test Report dated 20.12.2010 is wrongly prepared and needs to be made invalid.

(iii) Flats having 3 different flat Loads are clubbed together under one category of flat in TR-20.12.2010 due to the reasons mentioned in above para (ii);

(iv) Flat load calculated for each category of flat having same type/sq. ft area cannot be different in 2 Test Reports and

(v) Tower load calculated cannot vary in the 2 Test Reports *Infrastructure* being the same.

10. That thus, the 'Basic load calculation' in the Test Report dated 20.12.2010 provided is itself totally incorrect even though it is certified by Respondent, DHBVN that in the "presence of the contractor TR verified as per the details of load" and signed the certificate.

11. That when the 'Basic load calculation' itself in the Test Report dated 20.12.2010 is incorrect, the rest of the details worked out on the basis these invalid data or details provided like 'only 116 flats were occupied as against actual occupancy of 518 flats' on the date of energising 11 KV

1500 KVA supply connection are totally incorrect and this Test Report dt 20.12.2010 to be made Invalid and needs to be rejected.

12. That single point 11 KV 1500 KVA was energised on 25.12.2012 was actually energised only on the electrical Infrastructure load as indicated in the Test Report dt.8.07.2014 with loads of the 518 flats in occupancy. As per this Test Report dt. 8.07.2014, Total load of Flats is 4787.6 KW and total Load of Common Area is 619.90 KW and total 5407.50 KW. These figures are well within 15% load restriction of Common Area Load and thus eligible for application of HT DS tariff.
13. That after energization 11 KV 1500 KVA supply, residents of TCN and Appellant, TCN AOA had opposed levying higher tariff by Unitech (being developer and LT biller) and raised dispute directly with the Respondent, DHBVN at SE(OP) level. The real Reason for applying higher NDS tariff was never spelt out either by Unitech or the Respondent, DHBVN and nothing happened.
14. That the Appellants took over the complete charge of the electrical *Infrastructure* of TCN from the Unitech on 01.10.2015. Subsequently, Appellants came to know of the fact that on the basis of incorrect Test Report dt. 20.12.2010 approved by Respondent themselves, the Respondent was charging BS(NDS) tariff instead of BS(DS) tariff and approached CGRF vide case No.1388/2016. *SI-4/2009 mentions that the residents of various GHS are being charged higher tariff of electricity for their usage than the rates approved by the Nigam for its supply, which is putting unnecessary financial burden on such like consumers. The Nigam has taken the matter seriously and observed that the Instructions issued earlier in this regard are not being complied meticulously in the field.*
15. That TCN AOA came to know of the TR dt 20.12.2010 wherein the occupancy TCN was shown as 116 after AOA filed in CGRF. Thereafter, AOA had obtained details of occupants as on 30th November 2010 from the residents by asking them to provide EITHER copy of Unitech raised Electricity bill for the month of Dec., 2010 or earlier, OR copy of Occupation certificate of their flat OR copy of conveyance / Sale Deed. Residents were asked to provide any of these documents available with them. Documents so collected were compiled and tabulated. All the tabulated details of 518 flats along with documents provided were handed over to the Ombudsman in a folder during one of the hearing sessions in the year 2017.

16. That these 3 documents, electricity bill is normally accepted as proof for continued stay at a particular address by the government, Occupation certificate issued by developer is accepted as proof of occupation of flat by the Government/Town and Country Planning Department, Haryana for property tax purposes and the date of registration the Conveyance/Sale Deed confirms possession of the flat. It is not understood how these documents can be called 'vague and not cogent' evidence. When the 'Basic load calculation' itself in the Test Report dated 20.12.2010 is proved to be incorrect, in counting of occupied flats too could have been manipulated as the Test Report data sheet itself is unsigned.
17. That as per circulars SC. D-21/2006 and SC. D-29/2006, *it was decided by DHBVN, single point connection applied by the Multi Storey Buildings shall be released only in the name of Resident Associations of that particular Societies.* Accordingly, Unitech, the developer obtained 11 KVA 5000 KVA load sanction in the name of TCNAOA in July, 2008 after submitting 'schedule of energy consuming apparatus to be connected giving Tower wise electrical load' and which was duly approved as required under SI 48/2006.
18. That from time of energising partial supply of 11 KV 1500 KVA on 25.12.2010, energising full supply 11KV 5000 KVA on 8.07.2014 and until 1st Oct., 2015, Unitech was responsible for installation, maintenance of the Infrastructure, Payment of HT bills, generating LT bills and collection of payment 660 flats and correspondence with DHBVN. During this period, TCN AOA was not in the picture. It was only on 1.10.2015, TCNAOA took over complete charge electrical Infrastructure administration, maintenance and billing etc. SI-4/2009 *mentions about residents of Multi Storey Buildings having bulk supply connections are being charged higher tariff of electricity than the rates approved by the Nigam for its supply, which is putting unnecessary financial burden on such like consumers. The Nigam has taken the matter seriously and observed that the following Instructions issued earlier in this regard are not being complied meticulously in the field.*
19. That the following instructions were to be followed by the Respondent as per this SI:
- 1) *The tariff rates charged by the Colonizer /Residents Associations shall not exceed the rates approved by the Nigam for its supply. An undertaking in this regard shall be submitted by such Colonizer /*

Builder / Residents Associations to the concerned field offices, which shall be duly verified by the field officer on half yearly basis. It is applicable to existing as well as prospective Bulk Supply Connection.

20. That the Appellants raised dispute directly with the Respondent, DHBVN at SE (OP) level for applying higher NDS tariff. Instead of taking action as per SI-4/2009, the Respondent has just warned the Unitech and asked them to hold a meeting with RWA and to inform the compliance. Why was it not spelt out that BS(NDS) being applied as per the Test Report dated 20.12.2010 then which is proved to be incorrect now. Due to this, the residents of TCN had to pay higher BS(NDS) instead of BS(DS) tariff for no fault theirs. Excess amount paid for the period from Jan., 2011 to July, 2015 runs to Rs.3,38,62,831/-.
21. That request the Respondent to provide a copy of the 'compliance' letter, if any, submitted by Unitech in response to XEN (KCC Division) memo dated 27.05.2011. The Respondent has gained by applying higher tariff as mentioned in above para. In turn the Unitech has gained much more than Rs.10 lakhs per month by applying DHBVN's higher tariff for charging residents for Common Area Charges which is based on this tariff. The only losers are the residents of TCN by filing incorrect Test Report dt. 20.12.2012 which was approved by Respondent.
22. That the respondent has mentioned in Para A-7 that Test Report cannot be a 'Voluntary' statement put up by the customer and just to be counter signed by the Respondent. In this particular case, the Test Report dt. 20.12.2010 this what has happened. Appellant, TCNAOA was nowhere in the picture as the Electrical Infrastructure was still under the Developer, M/s. Unitech Limited. Though the supply connection Sanction Order issued by the Respondent was in the name of the TCNAOA as per DHBVN Sales Circular No. SC D-29/2006, the charge was with the Developer, Unitech. This charge of Infrastructure was to be transferred to TCNAOA only as per DHBVN's Sales Instruction No. SI 4/2009 -which mentions that "*Such Colonizer / Builder shall handover / change the connection in the name of resident association after 50% occupancy.* Therefore, where is the question Appellant comes in the picture of 'Voluntary' submission of Test Report as mentioned in the SDO's reply. If such provision were there, Appellant would have made no. 'occupied flats as 660 instead of just 116' even if 116 flats were there on ground. Approving of Test Report by a

Licensee comes with certain responsibilities as mentioned in DHBVN's SI-4/2007 and the Respondent has failed in this respect.

23. That to protect interests of residents, instructions were issued vide SI-4/2007, para 1 that for all BS connections, an Affidavit will be collected from coloniser that they are applying approved rates of tariff by the Coloniser / Builder. Has the Respondent collected such Affidavit every half early basis from Jan., 2011 to Sept., 2015. If so, the Respondent is requested copies of these Affidavits.
24. That to protect interests of residents, instructions were issued vide DHBVN SI-4/2007, para 3 that the *Colonizer / Builder shall handover / change the connection in the name of resident association after 50% occupancy. An affidavit in this regard shall be submitted to the field office alongwith the occupancy statement to be filed every month. The affidavit submitted shall be verified by field officers on monthly basis so as to ensure its genuineness.* Has the Respondent collected such Affidavit every month from Jan., 2011 to Sept., 2015. If so, the Respondent is requested copies of these Affidavits. Failure on the part of the Respondent in obtaining such Affidavits as per para 3 of SI -4/2007 resulted in paying higher charger for the Common Area maintenance (CAM) charges. Unitech, developer of 'The Close North' on completion of construction of 10 Towers (T01 to T08, T16 & T17) out of total 16 Towers in the complex April, 2008, started making allotment of flats to their customers w.e.f. Sept., 2008

Reply on merits: -

1. That in response to the contents of paragraph No.1 of the reply, it is submitted that the DHBVN has failed to appreciate the issues involved in the present case. The reply has been filed without even understanding the grievance of the Appellants.
2. That the contents of paragraph No.2 of the reply are a matter of record.
3. That the contents of paragraph No.3 of the reply are a matter of record. However, the order dated 29.11.2016 as passed by the Learned Consumer Grievance Redressal Forum has been wrongly passed and the same is subject matter of challenge before this Hon'ble Forum.
4. That the contents of paragraph No.4 of the reply are a matter of record. However, the order dated 08.05.2017 was passed in ignorance of the applicable regulations and it was set aside by the Hon'ble High Court.

5. That in response to the contents of paragraph No.5 of the reply, it is submitted that the representation dated 20.10.2023 had been submitted in order to arrive at mutually agreeable solution of the issues and grievances of the Appellant. The representation dated 20.10.2023 had been submitted in continuation of the main grievance of the Appellant-Association. However, till date there is no decision on the said representation and the Appellant-Association has never been conveyed an opportunity of hearing for the purpose of reconciliation. To the contrary, the Respondent has chosen to file a response on merit, which is again violation of Regulation No.21 of HERC Regulations 2004. The Respondent is an entity of the State and it ought to have acted and act as a welfare state. The grievance of the Appellant-Association is based on records. The Respondent could have checked the facts as regards correct occupancy from the Town and Country Planning Department, Haryana. The relevant documents are already on record and the Respondent was just required to verify the same independently, which it has failed to do. The Respondent has chosen to rely upon a communication dated 01.12.2010, which in fact, was never written by the Appellant-Association. It is a matter of record that the Appellant-Association had been handed over the possession and the affairs of the colony on 01.10.2015. Prior to this date, the control was with the Builder/Colonizer. Thus, all communications prior to this date were written by the Builder/Colonizer misrepresenting DHBVN. Unfortunately, this aspect is not being looked into by the Respondent. All these issues can be easily verified from the Town and Country Planning Department, Haryana.
6. That the contents of paragraph No.6 of the reply are denied as incorrect to the extent that reference to Appellant in sub-paragraphs of Paragraph No.6 is incorrect. It is again clarified that prior to 01.10.2015, the Appellant-Association had no occasion to deal and communicate with DHBVN. It is submitted that it is the Colonizer/ Builder who misuse its position to misrepresent DHBVN. The communications refer to in paragraph No.6 were in fact written by the Colonizer misusing the name of the present Association. The Appellant-Association was handed over the possession of the common areas for maintenance of the colony only on 01.10.2015. In fact, it is a fit case, where DHBVN should act against the Colonizer/Builder for submission of misleading information and causing wrongful loss to the Allottees and wrongful gain for itself. The grant of

benefit to the Appellant-Association in terms of the test report dated 08.07.2014 for the period 25.09.2014 onwards is a matter of record. The grievance of the Appellant-Association is for the period 25.12.2010 to 24.09.2014.

7. That the contents of paragraph No.7 of the reply are denied as wrong. The contents of the complaint and the appeal alongwith supporting documents showing occupancy of 518 apartments in 14 Towers is based on the official records. It is clarified that as per the mandate of Haryana Apartment Ownership Act, 1983, after obtaining occupancy certificate from the Town and Country Planning Department, Haryana a Colonizer is statutorily obligated to furnish a registered deed of declaration. In terms of the said mandate of law, in the present case also, the Colonizer submitted the deed of declaration in the Town and Country Planning Department, where it submitted correct information as regards occupancy of Apartment. It is submitted that the correct information was furnished by the Colonizer as for the unallotted or unoccupied inventory, it has to bear the liability of maintenance charges and statutory taxes. In case, the Colonizer had submitted the incorrect information as it submitted with the Respondent-DHBVN, the entire liability of statutory taxes and maintenance charges had to be borne by the Colonizer.

Thus, the Colonizer in apparent collusion with the field staff chose to and successfully furnished incorrect information to DHBVN and the latter did not deem it appropriate to verify from the records and actual status of the site. However, at the time of furnishing of statutory deed of declaration as per the mandate of Haryana Apartment Ownership Act, 1983 based on the same status at the site as it existed in the year 2010, the Colonizer furnished correct information. Thus, the Colonizer submitted information as suited to its interest and unfortunately due to lack of coordination between DHBVN and the Town and Country Planning Department, the fraud committed by the Colonizer remained unnoticed till the Appellant-Association took over the charge of the affairs of the colony on 01.10.2015.

The said information was accepted by the Town and Country Planning Department, Haryana after due verification. It is submitted that the information provided by the Colonizer as discussed hereinabove clearly indicates the occupancy of 518 apartments in 14 Towers during the period 25.12.2010 onwards. Therefore, 02 statutory Wings of the State

of Haryana cannot maintain 02 separate records pertaining same fact. In fact, the Colonizer submitted incorrect and misleading information with DHBVN indicating occupancy of only 116 apartments in 08 Towers during the period 25.12.2010 onwards. Further, the aforesaid fact can also be verified by DHBVN and this Hon'ble Forum by obtaining further documentation.

8. That the contents of paragraph No.8 of the reply are denied as wrong. The letter dated 01.12.2010 was written by the Colonizer claiming itself to be the Appellant-Association. In fact, the Colonizer in order to make illegal gains, chose to run DG sets and make illegal profits. It charged huge amounts from the Allottees. The documents prior to 01.10.2015 were submitted by the Colonizer and are misleading. It is again reiterated that the Appellant-Association came to have the possession of the colony only on 01.10.2015.
9. That the contents of paragraph No.9 of the reply are denied as incorrect. The reference to the judgment of the Hon'ble APTEL is incorrect in the facts and circumstances of the present case. It is submitted that the said judgment is completely distinguishable. In the present case, the documents required to substantiate the claim of the Appellant are on record.
10. That the contents of paragraph No.10 of the reply are denied as wrong.
11. That the contents of paragraph No.11 of the reply are denied as wrong.
12. That the contents of paragraph No.12 of the reply are denied as incorrect.
13. That the contents of paragraph No.13 of the reply are denied as incorrect.
14. That the contents of paragraph No.14 of the reply are denied as incorrect. The submissions made hereinabove are reiterated and for the sake of brevity are not being reproduced in reply to the corresponding paragraph.
15. That the contents of paragraph No.15 of the reply are denied as wrong. It is submitted that Section 17 of the Limitation Act provides that limitation would start from the date of the knowledge of the fraud. It is clarified that no sooner did the Appellant-Association was handed over the affairs of the common areas as per applicable statutory provisions (01.10.2015) and the fraud came to light, it approached the Consumer Grievance Redressal Forum. In any case, the cause of action in the present case is continuous.

16. That the contents of paragraph No.16 of the reply are denied as incorrect. There is no delay in approaching the Learned CGRF. The judgment cited in the corresponding paragraph is distinguishable.

Prayer:

- i. It is therefore respectfully submitted that the appeal may kindly be allowed as prayed for.
 - ii. Any other order or direction as this Hon'ble Forum may deem fit and appropriate in the facts and circumstances of the present case including appointment of Court Commissioner to verify the claims of the Appellant-Association from the official records of Town and Country Planning Department, Haryana and/or pass a direction to the Respondent to get the same verified officially from the Town and Country Planning Department, Haryana.
- J.** Hearing was held on 20.12.2023. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the appellant submitted the rejoinder and requested for short adjournment for arguments. Allowing the time, the respondent is directed to file response, if any, within 7 days with an advance copy to the appellant. The matter was adjourned to 08.01.2024.
- K.** Hearing was held on 29.01.2024. Both the parties were present during the hearing through video conferencing. At the outset, Ld. counsel appeared for the respondent requested for short adjournment due to some personal problem of the main counsel. Per contra, Ld. counsel for the appellant stated that they have no objection to the request made by the counsel for the respondent and further, he requested to fix the next date of hearing after 15.02.2024. Acceding to the request the counsel for the respondent, the matter was adjourned to 21.02.2024 without any further adjournment.
- L.** Hearing was held on 21.02.2024. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the appellant requested for short adjournment as the arguing counsel Shri Shekar Verma, Advocate has to attend a part heard matter before the Hon'ble Supreme Court which is listed on 21.02.2024. The date has been notified after the previous hearing in the matter before this Hon'ble Forum and requested that the same be adjourned for 27th or 29th February, 2024. Both the parties agreed to fix the date of hearing on 27.02.2024. Acceding to the request, the matter was adjourned for hearing on 27.02.2024.

M. The counsel for the respondent SDO vide email dated 26.02.2024 has submitted application for placing on record on affidavit dated 17.07.2008 filed by Unitech for release of connection in the name of appellant, which is reproduced as under:

1. That the present appeal is pending adjudication before this Hon'ble Forum. The appellant has filed a present representation dated 20.10.2023 pursuant to the Order dated 03.08.2023 passed by the Hon'ble Punjab and Haryana High Court in the matter of Close North Apartment Owners Association v State of Haryana and Others bearing case no. CWP-24661 of 2017 wherein the Appellant had challenged the Order dated 29.11.2016 ("Impugned Order") passed by the Ld. CGRF with a prayer for issuance of directions to the respondents for making necessary correction in the sanctioned load category and apply correct bulk supply (DS) tariff instead of bulk supply (NDS) for the period 25.12.2010 to 24.09.2014.
2. That it is a matter of record that the electricity connection in the instant case was released in the name of Close North Apartment Owners Association. The said connection was released pursuant to the submission of affidavit by the Unitech-Builder giving no objection to release of such connection in the name of the appellant. The present application is being filed to place on record the said affidavit, which establishes that the inspections and billing related issued were always in the knowledge of Close North Apartment Owners Association. The contents of the said affidavit are otherwise also acceptable facts and therefore, there is no new fact coming on record with the filing of present application.
3. The present application is being filed bonafide and no prejudice shall be caused to the appellant if the present application is allowed.

N. Hearing was held on 27.02.2024, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the Appellant submitted that since the Respondent has filed an application for placing on record an affidavit of the Unitech dated 17.07.2008 yesterday, they need time to file reply to the said application. In view of the request of the Appellant, they are permitted to file response to the said affidavit by 02.03.2024 with an advance copy to the respondent.

The present appeal is being taken up in pursuance to the Order of the Hon'ble High Court dated 03.08.2023 passed in CWP-24661 of 2017. The said Order was predicated on the case of the Appellant that no opportunity for

settlement was given under Regulation 21 and 22 of the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004. In view thereof, pursuant to the Order of the Hon'ble High Court, vide interim Order dated 09.08.2023, the parties were directed to conciliate in a meeting scheduled for 20.10.2023 at 10:00 A.M in the office of respondent SDO. During the hearing dated 25.10.2023, it was informed that both the parties met on 20.10.2023 in the office of respondent SDO to settle the dispute through mutual agreement. The Appellant filed a representation dated 20.10.2023, which was replied to by the Respondent. The representation of the Appellant and the reply of the Respondent filed thereafter evince that the conciliation on the dispute has failed between the parties and the present issue shall now be adjudicated in terms of the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004. The matter was adjourned to 05.03.2023.

- . The counsel for the appellant vide email dated 04.03.2024 has submitted reply to the application dated 26.02.2024, which is reproduced as under:
1. That the contents of paragraph No. 1 of the application are a matter of record. However, it is submitted that the Respondent Nigam has shown no interest in amicable settlement of the dispute. There is no final decision on the representation dated 20.10.2023. Instead of taking up a pragmatic approach, the Respondent Nigam is opposing the main appeal.
 2. That in reply to the contents of paragraph No. 2 of the application, it is submitted that Respondent Nigam has not even understood the grievance of the Appellant. In so many words, it has been clarified earlier also that the complete possession of the project/ common areas was handed over to the present duly elected RWA on 01.10.2015. Prior to this date, the Builder was managing the affairs of the Association, a fact which has also been admitted in the certificate dated 08.05.2017, which has been placed on record along with the rejoinder dated 19.12.2023.
 3. That the contents of paragraph No. 3 of the application are denied as wrong. The affidavit 17.07.2008 had been submitted by the Builder.

Prayer

It is therefore respectfully submitted that the present application may kindly be dismissed or disposed of in the aforesaid manner.

- P.** The matter was heard finally on 05.03.2024. Both the parties were present during the hearing through video conferencing. Matter was argued at length by the Counsel for the Appellant and the Respondent. I have perused the pleadings on record as well as taken into consideration the arguments made by both the parties and observed as under:
- a. The present appeal was remanded back to me as per the Order of Hon'ble Punjab and Haryana High Court dated 03.08.2023 in the matter of The Close North Apartment Owners Association v/s State of Haryana and Others bearing case no. CWP-24661 of 2017.
 - b. As stated in the Interim order dated 27.02.2024, the parties were afforded an opportunity to conciliate the issue. However, no agreement could be arrived at between the parties and therefore, the Appellant filed representation dated 20.10.2023, which was considered for adjudication. Both the parties filed their respective pleadings including reply by the Respondent, Rejoinder by the Appellant, Application to place on record affidavit of Unitech by the Respondent and reply to the same by the Appellant.
 - c. This Appeal has emanated from the Order of CGRF dated 29.11.2016, wherein Appellant had raised various issues including charging of BS-NDS tariff, benefit of rebate and interest on ACD. The CGRF allowed certain benefits to the Appellant while holding that with effect from notification of Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013, the billing shall be governed as per said regulations.
 - d. Ld. Counsel for the Appellant and Respondent expressly agreed that pursuant to compliance of the decision of the CGRF, the grievance of the Appellant Association is limited to Bulk Supply – Non-Domestic (BS-ND) tariff being charged for the period 25.02.2010 to 08.01.2013 instead of Domestic tariff. Appellant has prayed for rectification of the bills from 25.02.2010 to 08.01.2013 based on Domestic Supply rates and refund of the amount along with the interest.
 - e. Vide Sales Circular No. D-29/2006 dated 21.07.2006, to ensure rightful billing from the allottee's of the Group housing societies, instructions were issued to the effect that single point connection applied by the Group Housing Societies/Multi Storey Buildings, collectively shall be released

only in the name of Resident Associations of that particular Societies. In compliance with the circular, The Close North Apartment Owners Association (Appellant) applied for an electricity connection in their name vide A&A No. 4723 dated 25.04.2008. In pursuance thereof, an affidavit dated 17.07.2008 was submitted by the Unitech stating that they have no objection to release of connection to the Appellant Association. Accordingly, sanction was accorded vide letter of the DHBVN dated 25.07.2008 for release of load 5407.520 KW with CD 5000. In terms of the condition no. 9 of the said sanction letter, documentary proof in support of the identification of the authorized signatory was obtained from the applicant association. Thereafter, Appellant requested DHBVN to release partial load of 1500 KW. The DHBVN vide letter dated 30.11.2010 accorded approval for release of 1500 KW partial load as a stop gap arrangement till commissioning/ energisation of proposed 66 KV S/Stn., Serctor-47, Gurugram. The said approval was marked to the Appellant Association. The Respondent along with their reply placed on record a letter of the Appellant Association dated 01.12.2010 wherein the Association stated that "*The residential group complex is partially occupied and we are running DG sets to feed the power supply to the complex*".

- f. The release of connection had to be governed by the instructions contained in Sales Manual, 2005 for grant of electric connection subject to any amendments thereof. In view thereof, a Test Report was prepared by the electrical contractor on behalf of the Appellant which was submitted to the DHBVN. The said Test Report was verified by the Executive Engineer of the DHBVN. The Board Installation Test Order verifying the Test Report was prepared on 20.12.2010, wherein it was mentioned that the installation was tested by the Executive Engineer on 20.12.2010 in the presence of the representative of the Contractor. Along with the Test Report, 'Schedule of Energy Consuming Apparatus is enclosed which mentions that "Detailed enclosed, load -1500 KW with CD 1500 KVA and T.R verified as per the details of the load attached". The said schedule has been acknowledged by the electrical contractor. As per the said test report, the load of the common facilities in the housing society exceeded 15% of the total load.
- g. Based on said Test Report, Service Connection Order (SCO) was issued on 20.12.2010 wherein recommendation was made for charging of Non-Domestic Supply tariff as per terms of the Sales Circular No. D-7/2010

dated 01.10.2010. The SCO has also been signed by the representative of the Consumer. The Sales Circular No. D-7/2010 dated 01.10.2010 specifies that the Bulk Domestic Supply is available for the Colony/Group Housing Society having minimum 70 KW load out of which residential/domestic load should be at least 85% and the balance 15% load shall be for common facilities and no industrial activity will be permitted. It has been further clarified in the Circular that the domestic load shall include the connected load of lifts, water supply pumps and firefighting water pumps and shall form part of 85% of the total connected load.

Clause 8. BULK DOMESTIC SUPPLY

(i) Availability

*Available for the **Colony/Group Housing Society having minimum 70 KW load out of which residential / domestic load should be at least 85% and the balance 15% load shall be for common facilities and no industrial activity will be permitted.***

The colony / Group Housing Society shall be bounded by boundary wall or fence and should have only secured entry points for ingress and egress. A single point electricity connection shall be provided at the H.T. (11 kV) level (or higher) and further distribution within shall be owned and managed by the Colony / Group Housing Society.

(ii) Character of supply A.C, 50 Cycles, 3 phase supply at 11 KV or above voltage level at single delivery point.

NOTES

(a) Domestic load shall include the connected load of lifts, water supply pumps and fire-fighting water pumps and shall form part of 85% of the total connected load.

(b) No industrial activity shall be permitted inside the complex.

(c) All other terms and conditions as applicable to Bulk Supply category shall also be applicable to the Bulk Domestic Supply category."

(Emphasis Supplied)

As per the above-mentioned Test Report, the Appellant was charged Non-Domestic Supply tariff as the load of the common facilities admittedly exceeded more than 15% of the total connected load. The grievance of the Appellant in the present appeal is that the Test Report dated 20.12.2010 is incorrect as the same depicted the occupancy of only 116 residents in 8 Towers; whereas the actual occupancy was 518 as per list of possessions in 14 Towers. Thus, the dispute essentially is regarding the validity of the Test Report.

- h. Ld. Counsel for the Respondent raised a preliminary objection as regards the claim of the Appellant being barred by the law of limitation. It was contended that Appellant has sought rectification of bills for the period 25.12.2010 to 08.01.2013. The said claim is time-barred in view of the fact that the complaint could be filed before the CGRF only in those cases whose date of cause of action is made within 2 years as per the HERC Regulations in vogue. As per section 42(6) of the Electricity Act, 2003, a forum is established for the redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and accordingly, Forum and Ombudsman Regulations have been notified by HERC. As per Regulation No. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen. The Appellant cannot invoke the provisions of the Electricity Act, 2003 to raise a stale and time-barred money claim. Reliance in this regard was placed upon the judgment of the Hon'ble Delhi High Court titled North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. 2012 (129) DRJ 644.
- i. On this objection of the Respondent, the counsel for the Appellant stated that the operation of the electrical supply was taken over by them from the Builder in 2015 and as such, the factum of incorrect Test Report came to their knowledge in 2015 only. It was mentioned that an elected body of the Appellant Association took over the maintenance of the Group Housing Society in the year 2015 only. This contention of the Appellant was refuted by the counsel for the Respondent on the ground that the connection was issued in the name of the Association, which was duly represented by their Authorized representative since 2008. It was further stated that all correspondence as regards the electrical connection was done with the Appellant Association only and of the Builder was in charge of distribution of the electrical supply within the society, he was acting as an agent of the Appellant Association for the DHBVN as the privity of contract is *inter-se* DHBVN and Appellant Association. In that view, the Appellant Association cannot urge that they were not aware of any Test Report, more so when all documents including SCO have been signed by their representative. A mere change in the body of representative cannot

be sought as a ground to refute the knowledge of the documents submitted on the behalf of the Appellant association and as such, the validity of the Test Report cannot be challenged at this staged. It was also argued that the members of the Appellant Association cannot be allowed to sit quite for years and then raise any issue belatedly. If that be so, any new elected body of Association can file a claim challenging the documents submitted by earlier representatives and raise claims on the same belatedly by urging that the same came to their knowledge belatedly.

- j. I find substance in the objection raised by the Respondent to the effect that an act undertaken in the name of the Association by their authorized representative binds all the members of the Association. As such, the validity of the Test Report dated 20.12.2010 which was submitted by the Electrical Contractor on behalf of the Appellant Association and duly acknowledged and accepted by their authorized representative cannot be challenged after 5 years, as is being done by the Appellant Association. However, it is observed that the CGRF below has examined all claims on the merits and the appeal against the same has only been filed by the Appellant. As such, once the claims have not been rejected on the ground of limitation by CGRF and there is no challenge to same by the respondent-DHBVN, it is imperative for me to deal with the merits of the claim.
- k. On merits, Ld. Counsel for the Appellant emphasized that the Test Report dated 20.12.2010 was deliberately incorrectly prepared on the behest of the builder so that they can charge higher tariff from the residents for electric connection supply along with DG Supply and maintenance charges in a bill. As such, a fraud has been played upon the residents by the Builder by submitting incorrect details in the Test Report. It was further argued that Appellant has obtained an affidavit of the Builder-Unitech dated 08.05.2017 and Deed of declaration dated 18.06.2010 filed by the Unitech with the DTCP. Relying on the deed of declaration dated 18.06.2010, Ld. counsel for the Appellant mentioned that Part Occupation Certificate for 10 towers were issued by that time. However, the Test Report dated 20.12.2010 takes into account only 116 flats in 8 towers and therefore, depicts common load greater than 15% of the sanctioned load. With reference to affidavit of Unitech dated 08.05.2017, it was submitted that the Builder themselves stated that Test Report dated 08.07.2014

projects load as sum total of flats in that particular tower and break up of tower wise flats was submitted to DHBVN.

1. I have carefully perused the new documents brought on record by the Appellant. It is hereby observed that it is an admitted case of the Appellant that in 2010, the housing society was partially occupied and the electricity was fed from DG Supply, which is mentioned in their letter dated 01.12.2010. At the time of application, the Appellant had themselves mentioned that there were 116 flats in the society. In the Deed of Declaration dated 18.06.2010 as well, the builder has stated that the partial occupation was given for 10 towers only out of 16 towers. The Deed of Declaration does not specify the actual usage of electrical load in the society. There is difference between the 'actual occupation' and the 'constructive occupation' and for assessment of connected load, it is the actual occupation, which is taken into consideration. Furthermore, the resident starts to occupy and reside in the housing society in phases. The presumption is that the load connection sought in the year 2010 was based on the actual requirement of electricity at that particular time. The fact of the matter is that the Test Report dated 20.12.2010 was prepared by the Electrical Contractor and was duly verified by the DHBVN and acknowledged by the Appellant Association themselves. The Deed of declaration or the affidavit of the Unitech dated 08.05.2017 regarding load connection in the year 2014 is not conclusive to refute the contents of the report dated 20.12.2010. There is all likelihood that the actual occupation in the towers not considered in the Report dated 20.12.2010 was nil or may not be adequate to be fed through electric supply of DHBVN and the same was being run through DG. It is not disputed that the supply was being made through DG sets also. The request for sanction of partial load was made by the Appellant Association themselves and it is presumed that the said request is based on their wisdom as regards the requirement vis-à-vis the actual occupation of the premises.
- m. Another important aspect is that at the time of preparation of the Test Report dated 20.12.2010, the guidelines for computation of connected load, as provided in the Sales Manual 2005, were applicable. The guidelines provide specific instructions for considering that the entries of the load shall be based on the actual requirement of usage of a particular electric point in a particular season and shall not be exaggerated. The said guidelines were revised with the notification of Haryana Electricity Supply

Code, 2014 w.e.f. 08.01.2014. As such, the comparison of the Test Report dated 20.12.2010 and 08.07.2014 cannot be made.

- n. The contention of the Appellant that the Builder deliberately submitted incorrect details in the Test Report and committed fraud on them or there is any collusive act of the Builder and the DHBVN cannot be considered in absence if the Unitech being made party to the complaint. Admittedly, the Appellant did not implead Unitech as party to the complaint filed before CGRF.
- o. The Forum, in its order dated 29.11.2016, had also mentioned that the consumer had himself provided the occupation of 116 flats. The Test Report dated 20.12.2010 was submitted by their Electrical Contractor and the SCO prepared on the basis of the same is duly signed by them. The Appellant had been paying the electricity bill regularly at Bulk Supply NDS tariff. There is not enough conclusive evidence to hold that the connected load assessed in the year 2010 was incorrect. In view thereof, I am of the view that the decision of the Forum "*that BS-NDS category tariff is applicable in the present case from the date of connection (DoC) to 8/01/2013*" is in order and upheld.
- Q.** The appeal is disposed off in above terms.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 7th March, 2024.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 7th March, 2024

CC

Memo. No. 4879-85/HERC/EO/Appeal No. 7/2017 (R) Dated: 07.03.2024

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