

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/P. No. 34 of 2023

Date of Hearing : 03.12.2024

Date of Order : 01.01.2025

IN THE MATTER OF:

Petition under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the Haryana Electricity Regulatory Commission(Duty to Supply Electricity on Request , Power to recover expenditure incurred in providing Supply and Power to recover expenditure incurred in providing Supply and Power) 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

Uttar Haryana Bijli Vitran Nigam, IP-3 & 4, Sector-14, Panchkula,
Haryana - 125005

VERSUS

Respondent(s)

1. M/s Ansal Properties & Infrastructure, #15, Ansal Bhawan 16, Kasturba Gandhi Marg New Delhi-110001, through its Director Sh. Jagath Chandra.
2. Sushant City Resident Welfare Association (SCRWA), (Regd No.01143) Ansal Sushant City, Panipat-132103 through Sh. Suresh Gumber, President-RWA.

Present

On behalf of the Petitioner

1. Ms. Sonia Madan, Advocate
2. Sh. Rajesh Arora, SE, UHBVN

On behalf of the Respondent

1. Sh. Akhil Shandilya, Advocate for R-1

QUORUM

Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member

ORDER

1. Petition:

- 1.1. That the present petition is being filed by Uttar Haryana Bijli Vitran Nigam (hereinafter referred to as "UHBVN/Petitioner") through Dharamvir Chhikara, Superintending Engineer (Operations), Panipat who is authorized to file the instant petition and is otherwise also is well conversant with the facts of the present case.
- 1.2. That the Petitioner had earlier filed a Petition bearing no. 67 of 2022 seeking grant of new connection/additional load by the licensee to the members of Resident Welfare Association (RWA) of TDI City, Panipat as an immediate respite measure in view of the deficiency of Developer-Respondent no. 1. The said prayer was made conditional subject to deposition of full amount equivalent to the inadequacy jointly by the members of RWA. In this respect, a proposal was made by the Petitioner in lieu of deliberations with the representatives of RWA. By way of said proposal, the development charges were required to be collectively deposited by the RWA equivalent to the amount of inadequacy computed by the Petitioner for electrical infrastructure in TDI City, Panipat.
- 1.3. That in the hearing dated 22.02.2023 held before the Hon'ble Commission in Petition no. 67 of 2022, it was apprised to the Hon'ble Commission that although the representatives of RWA earlier agreed to deposit the amount of inadequacy in advance, however, subsequently they did not come forward to deposit the amount equivalent to inadequacy. It was submitted that the 200-250 families are ready to deposit the inadequacy amount on pro-rata basis and requested release of connection on DHBVN pattern. It was also submitted by the Petitioners that a revised proposal will be submitted to the State Government for approval in this regard. Accordingly, the Hon'ble Commission disposed off the petition as infructuous with direction that Petitioner may file fresh petition, if need be. The relevant excerpt of the said Order dated 23.02.2023 is reproduced herein below for ready reference-

"3..... counsel for petitioner submitted that although the residents of RWA have earlier agreed to deposit the amount of inadequacy in advance as per earlier deliberations held with RWA, yet the RWA is not coming forward to deposit amount equivalent to the inadequacy, which is approximately Rs 23.63 Crores in case of TDI City Panipat as already stated in the petition. Out of total residents of society, only 200-250 families are ready to deposit the inadequacy amount on pro-rata basis and have requested for release of connections on DHBVN pattern after depositing of development charges. She further submitted that, accordingly, a revised proposal will be submitted to the Commission on receipt of approval from State Government which is under process.

4. In view of the foregoing facts and circumstance, Commission observes that as per petition/ statement of the petitioner, the RWA is not ready to deposit amount equivalent to the inadequacy which is in contradiction to the contents/prayer. Therefore, the petition does not survive and the same is disposed of, being infructuous. However, the petitioner may file a fresh petition if need be."

(Emphasis Supplied)

A copy of the Order dated 23.02.2023 is appended.

- 1.4. That thereafter, the Petitioner modified the proposal after consulting the members of the RWA of TDI City, Panipat, and the condition with respect to submission of the joint affidavit and deposit of complete inadequacy amount of township by RWA was dispensed with. The said revised proposal was submitted to the State Government for approval and the same was approved with the following terms –
- i. *For release of connection in licensed colonies with deficient infrastructure and non-availability of bank guarantee by developer, the requirement of joint affidavit through RWA and deposit of complete inadequacy amount of town ship by RWA after its collection from members of RWA be dispensed with, as no RWA come forward to adopt it.*
 - ii. *In licensed colonies with deficit electrical infrastructure, the electricity connections be released to individual new connection applicants or existing applicants seeking extension of load by depositing individual affidavit and development charges by individual consumer on voluntary basis to UHBVN on the same methodology and principles as being followed in DHBVN with the approval of State Government,*
 - iii. *While calculating the development charges, the cost of land should not be included and earmarked land in layout plan for electric sub-station (ESS) should be transferred to DISCOM, which will be ensured by DTCP. In cases, where land is not earmarked for ESS, but load norms of power utilities requires creation of sub-station, in that case the DTCP / HSVP shall ensure transfer of suitable land i.e. pieces of land wherein General electric Layout Plan (GELO) of proposed sub-station fits in.*
 - iv. *Similarly, the credit of electrical infrastructure already created by the developer should also be given by DISCOM while calculating the development charges.*
 - v. *For any required augmentation of distribution system in the township as per technical standards in vogue, the same will be carried out by Discom out of available funds accumulated through deposit of development charges.*
- 1.5. That in view of the proposal approved by the State Government as referred above, the Petitioner has recently filed the petition seeking urgent interim relief for release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/

rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rata basis voluntarily by the plot holders/new applicants. In addition, action is sought against the TDI Infratech Pvt. Ltd. for defaults in creation of adequate electrical infrastructure with directions to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.

- 1.6. That the RWA of Ansal Sushant City, Panipat (Respondent no. 2) has requested for release of connections on the similar lines as is being sought in Petition filed for TDI City, Sector-39, Panipat. The Petition, by way of instant petition, is therefore, approaching this Hon'ble Commission for approval of release of connections to the members of the Respondent no. 2/ allottees/ flat owners subject to deposit of inadequacy amount required for augmentation/ installation of balance electrical infrastructure to enable release of extended load/ new connections with higher load.

A. DETAILS OF THE PARTIES -

- 1.7. That the Petitioner is a state-owned Distribution Company and registered under the Companies Act, 1956 formed under the corporatization/restructuring of the erstwhile Haryana State Electricity Board (HSEB). The Petitioner is responsible for the distribution and retail supply of electricity in the North Zone of the State of Haryana which encompasses the projects developed by the Respondent Developer/Builder.
- 1.8. That Respondent no. 1 is the developer of a licensed residential plotted colony, the Ansal Sushant City, Panipat which is a plotted colony spreading over 346 Acres situated in Sector-19, Panipat, Haryana. Respondent no. 1 was granted the following licenses by the Director (Town & Country Planning), Government of Haryana over the years under DTCP Scheme-LC-585

SR. No.	Particulars	Description
1	DTCP Scheme No.	LC-585
2	Licenses Numbers	17 to 28 of 2005 dated 25.07.2005, 466 to 473 of 2006 dated 27.02.2006, 1178-1184 OF 2006 dated 25/09/2006, 106-117 OF 2007 dated 12/02/2007, 119-124 OF 2007 dated 19/02/2007, 118 OF 2008 dated 04/06/2008, 20 OF 2009 dated 30/05/2009, 118 OF 2012 dated 23/11/2012 and 80 OF 2017 dated 06/10/2017
3	Approved Lay out plan Area	346.0025 Acres

4	Area of the Scheme	346.0025 Acres
6	Nos. of residential Plots	2817

The developer got approved the electrification plan for an area of 175 acres for 14 MVA, however, the area was increased to 346 acre, and being the same colony, the increased area is considered with the ultimate load of the increased area of the colony. The revised layout plan is appended.

- 1.9. That Respondent no. 2 is the Resident Welfare Association of the Ansal Sushant City, Panipat. After the sale of plots/dwelling units in the project developed by the delinquent developer, Respondent no. 2 - Resident Welfare Association (RWA) Ansal sushant City, Panipat has been established with the mandate of looking after the issues of residents. The Respondent no. 2 is registered under the Societies Act, 1860 and governs their day to day functioning as per the by-laws established by it.

B. CONSPECTUS OF THE PETITION –

- 1.10. That the Petitioner is filing the instant petition seeking certain urgent relief(s) mentioned in the succeeding paragraphs in view of the representations made to the Petitioner regarding the hardships faced by the owners/occupants/residents of the premises/units in the residential project developed by the Respondent no. 1 (hereinafter also referred to as “Delinquent Developer”) wherein the Respondent no. 1 /Delinquent Developer has developed project by the name of Ansal Sushnat City, Panipat which falls within the Petitioner’s Licence area without the adequate electrical infrastructure to cater to the load as per applicable load norms.
- 1.11. That the Respondent no. 2, which is one of the Resident Welfare Association of the Ansal Sushant City, Panipat through its representative, Sh. Suresh Gumber and Sh. Rajiv Jain had approached the Petitioner and explained their grievances as regards the irregular supply of electricity owing to lack of adequate electrical infrastructure in the project area. They had also agitated their grievances with respect to the erratic supply of electricity before various Authorities/ Forums/ Courts.
- 1.12. That various owners/occupants/residents of Ansal Sushant City, Panipat are seeking new electricity connection/additional load, etc. within the project area of the Respondent no.1. However, due to the non-development of adequate electrical infrastructure by the Delinquent Developer and non-submission of Bank Guarantee by the Developer, the Petitioner stopped the release of further connections in the licensed colony.
- 1.13. That a similar situation prevailed in the License area of Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as “DHVBN”) i.e. Southern Haryana, especially with respect to the projects of the

Delinquent Developers in Gurugram, Haryana. In pursuance to alleviate the grievances of the individual owners/occupants/residents situated within the projects of the Delinquent Developer, a Petition with case no. HERC/Petition No. 55 of 2021 titled Dakshin Haryana Bijli Vitran Nigam v. M/s Ansals properties and Infrastructure and Ors. was filed by the DHBVN before this Hon'ble Commission seeking the release of new electricity connections/additional load to distressed residents on voluntary payment of 'Development Charges' to DHBVN subject to adjustment/refund by Delinquent Developers therein by payment of the cost to DHBVN or curing prevalent deficiencies.

- 1.14. That the Hon'ble Commission took cognizance of the matter and issued an Order dated 02.02.2022 permitting the DHBVN to release the new electricity connections/additional load on voluntary payment of development charges as an ad-interim measure and directed the DHBVN to keep a record of the charges paid by the applicants seeking the release of new connection/additional load in the areas developed by Respondents therein and to make the same available to the Commission as and when directed to do so. For the kind perusal of this Hon'ble Commission, the relevant portion of the Order dated 02.02.2022 has been reproduced as under:

“15. In the given circumstances, the Commission deems it appropriate to grant immediate relief to the distressed residents of the subject areas/projects developed by the respondent developers and permits the petitioner to release new electricity connections/additional load on voluntary payment of development charges mentioned in the Petition. This is an ad-interim measure aimed at resolving needs of those distressed persons, who are in urgent need of an electricity connection/additional load and voluntarily opt to pay development charges.

16. The petitioner is directed to keep a record of the charges paid by applicant(s) seeking release of new connection/additional load in the areas developed by respondents and to make the same available to the Commission as and when directed to do so. In case, the petitioner recovers cost of the claimed inadequacies, the aforesaid charges, voluntarily paid by the above applicants, shall be adjusted/set off in their future energy bills. ”

(Emphasis Supplied)

A copy of the Order dated 02.02.2022 referred above is appended.

- 1.15. That subsequently the Hon'ble Commission considered it necessary to assess the inadequacies of each builder/respondents therein independently and directed the DHBVN vide Order dated 18.05.2022 to file separate petitions regarding inadequacies of infrastructure in respect of each developer with all the relevant details/facts for adjudication. The relevant extract of the Order dated 18.05.2022 is reproduced as under:

“The Commission has considered the aforesaid submissions made by the parties. Since the inadequacy of each builder/respondent is required to be assessed individually as per the norms/regulations

occupying the field at relevant time, the Commission directs the petitioner to file separate petitions regarding inadequacy of infrastructure in respect of each developer with all the relevant details/facts for adjudication within 5 weeks”

(Emphasis Supplied)

A copy of the Order dated 18.05.2022 referred above is appended.

- 1.16. That thereafter, as per the directions of the Hon'ble Commission, separate petitions with respect to each of the Delinquent Developers therein were filed. The Petition no. 55 of 2021 was disposed of with Order that the ad-interim directions passed vide interim order dated 02.02.2022 is extended to each of the separate petitions filed by DHBVN against the Respondents/ Delinquent Developers therein. The relevant extract of the Order dated 14.09.2022 is reproduced as under:
- “In the given facts and circumstances, the Commission deems it fit to dispose off the present petition in view of the separate petitions filed by DHBVN. The Commission will now adjudicate the issue of inadequacies in respect of each of the concerned respondent developer based on the relevant facts and details mentioned in the separate petitions filed by DHBVN. Accordingly, the interlocutory application (IA) filed by M/s Unitech Ltd, respondent no-3 shall be heard with the separate petition no 46 of 2022 (DHBVN Vs M/s Unitech Ltd). Meanwhile, in the interest of justice, the ad-interim directions passed in the present petition vide interim order dated 02.02.2022 qua release new electricity connections/additional load on voluntary payment of development charges shall extend to each of the separate petitions filed by DHBVN against the respective Respondent-developers.”*

(Emphasis Supplied)

A copy of the Order dated 14.09.2022 referred above is appended.

- 1.17. That a meeting was held between Resident Welfare Association of the TDI City, Panipat and the Petitioner wherein the members of RWA sought release of connections from the Petitioner and agreed to bear the development charges and ensure joint submission of the same by collecting the charges from the existing members as well as from the future members of the township. Accordingly, the Petition no. 67 of 2022 was filed before the Hon'ble Commission. Vide Order dated 05.01.2023, the Hon'ble Commission observed as under-
- "4. The representative of RWA also appeared before the Commission, and submitted that as per the meeting with UHBVN officials, they have agreed on the proposal deliberated with them by UHBVN officials.*
- 5. The Commission pointed out that if the licensee can recover the amount of inadequacy from RWA voluntarily subject to refund to RWA in case inadequacy is removed by the developer, then what is the need to come before the Commission for any relief. Therefore, the Commission directs the petitioner to ensure recovery of amount as stated by the representative of the RWA to be paid voluntarily, equal to inadequacy from the RWA within four weeks as per the proposal and approach the*

Commission with appropriate prayer/request for further adjudication of the matter."

- 1.18. That however, subsequent to the same, the representatives of the RWA of TDI City, Panipat did not come forward to deposit the amount equivalent to the inadequacy. In the hearing held before the Hon'ble Commission on 22.02.2023, it was submitted that the 200-250 families are ready to deposit the inadequacy amount on pro-rata basis and requested release of connection on DHBVN pattern. It was also submitted by the Petitioners that a revised proposal will be submitted to the State Government for approval in this regard. Accordingly, the Hon'ble Commission disposed off the petition as infructuous with direction that Petitioner may file fresh petition, if need be.
- 1.19. That thereafter, the Petitioner modified the proposal and the condition with respect to submission of joint affidavit and deposit of complete inadequacy amount of township by RWA was dispensed with. The said revised proposal was submitted to the State Government for approval and the same was approved. The terms of the approved proposal are reproduced above.
- 1.20. That in view of the proposal approved by the State Government as referred above, the Petitioner filed the petition seeking urgent interim relief for release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/ rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rata basis voluntarily by the plot holders/new applicants. In addition, action was sought against the TDI Infratech Pvt. Ltd. for defaults in creation of adequate electrical infrastructure with directions to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.
- 1.21. That the RWA of Ansal Sushant City, Panipat (Respondent no. 2) has requested for release of connections on the similar lines as is being sought in Petition filed for TDI City, Sector-39, Panipat.

C. INTERIM URGENT RELIEF SOUGHT FOR THE MEMBERS OF THE RESPONDENT NO. 2 -

- 1.22. That in the present Petition, Petitioner is seeking similar interim reliefs for the owners/occupants/residents of the Ansal Sushant City, Panipat represented through Respondent no. 2 who are suffering because of defaults of the Respondent no. 1 to establish adequate electrical infrastructure in accordance with the Sanctioned Electrification Plan. The Petitioner has held meetings with Respondent no. 2 wherein requests were made for the resolution of hardships of the owners/occupants/residents of Ansal Sushant City, Panipat by the release of new connections. Based on such discussions, the Petitioner is seeking approval of the Hon'ble Commission for release of extended load/ new connections for which the members of RWA of Ansal Sushant City, Panipat have to pay development charges on Rs. Per KW basis based on load of the plot/flats as per load norms, where

connections are required to be released in terms of the revised proposal.

- 1.23. That the development charges recovered by the Petitioner will be utilized to create adequate electrical infrastructure in the township. The development charges deposited individually shall be adjusted/refunded as when the Respondent no. 1 cures the deficiencies or make payment of the cost thereof. The new connections and load will be released by such augmentation of infrastructure as is feasible in view of the recovered amount. The Petitioner is, therefore, seeking the kind indulgence of the Hon'ble Commission for the grant of urgent relief to the distressed members of Respondent no. 2 in terms of the proposed procedure submitted above.

D. DEFAULTS OF THE RESPONDENT NO. 1/ DEVELOPER IN THE CREATION OF ADEQUATE ELECTRICAL INFRASTRUCTURE -

- 1.24. That the Petitioner shall also set out here under the defaults of the Respondent no. 1 in the installation of Electrical infrastructure as per Sanctioned Electrical Plan –

- i. The Respondent no. 1 had approached the Petitioner for approval of the Electrical Plan for the plotted colony and the electrification plan was approved by Chief Engineer (OP) Rohtak Memo No. Ch-202 /F-90 dated 21.03.2006 for Ansal Sushant City, Panipat
- ii. The Petitioner Department was constrained to issue a notice bearing Memo No. Ch-55/DST/Ansal City/Panipat/2019-20 dated 18.08.2021 calling upon the Delinquent Developer to furnish cost or Bank Guarantees on account of inadequate electrical infrastructure in its projects/colonies situated in Sector-19, Panipat. The Petitioner Department in the said notice specifically referred to the various existing regulations notified by the Hon'ble Haryana Electricity Regulatory Commission (HERC).
- iii. Keeping in view the latest decisions with the approval of the State Government, the inadequacy in the project has been calculated after considering the infrastructure already created in the township, after excluding the cost of land required for the sub-station, as 1.25 acres of land earmarked for electric sub-station (ESS) in the layout plan has been transferred to UHBVN and increased area of the scheme. After considering the above and as per the latest applicable load norms, the inadequacy amount worked out to be Rs 35.16 Crores for the creation of electrical infrastructure to meet the power requirement of plot holders as per their ultimate load requirement. The details of the inadequacy amount are appended.

- 1.25. That in view of the foregoing details, regarding the default of the Respondent no. 1 to install electrical infrastructure for the project, the creation of capacity in the network and required electrical infrastructure for the release of the new connection is not available for all prospective residents in the township. Therefore, there is a dire

need to take immediate steps to provide relief to the plot holders or new applicants, and therefore, an immediate ad-interim measure is to be resorted to grant immediate relief to the distressed residents of the colonies/projects developed by the Respondent/Delinquent Developer.

E. COMPUTATION OF DEVELOPMENT CHARGES -

- 1.26. That for the purpose of obtaining the voluntary payment of development charges on per KW from prospective new consumers for the development of electrical infrastructure, the development charges are determined to vide the following formula:

$$\begin{array}{l} \text{Development Charges} \\ \text{(in rupees per KW per} \\ \text{Applicant/} \\ \text{Consumer)} \end{array} = \frac{[\text{Cost of inadequacies of the} \\ \text{project cost} \div \text{Total} \\ \text{ultimate load of prospective} \\ \text{applicants in the project}] \times \\ \text{ultimate load or applied load} \\ \text{(whichever is higher) of} \\ \text{individual Applicant /} \\ \text{Consumer.}}{\quad}$$

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

- 1.27. That by applying the above-said formula, proposed Development charges computed for the deficient project of Ansal Sushant City, Panipat shall be determined. It is submitted that the charges are proposed to be applicable up to 31.03.2024 and are to be enhanced by 10% every financial year thereafter. The new applicants of the domestic category have the option to deposit proportionate "development charge(s)" in a lump sum or 12 EMI's (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four percent) would be allowed to domestic applicants/consumers opting to deposit development charges in a lump sum in one go. It is pertinent to mention herein that these development charges shall be refunded afterwards subject to recovery that would be made from the Delinquent Developer.
- 1.28. The applicants of other than domestic categories would be required to deposit the proportionate development charges in one go before the 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/consumer would be refunded afterwards subject to recoveries that would be made from defaulting developers.
- 1.29. That the cost of installing the adequate electrical infrastructure to cater to the ultimate load has to be to the account of the Delinquent Developer/ Respondent no. 1, who has failed to install adequate infrastructure. The applicants/consumers shall, therefore, be

reimbursed such development charges after recovery made from Respondent no. 1.

F. LEGAL FRAMEWORK -

1.30. That the Hon'ble Commission has ample power to issue such directions as is necessary to ensure the supply of electricity which is a basic amenity. 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 electric plant used for the purpose of giving that supply.

1.31. That in the exercise of the powers granted vide Section 46, this Hon'ble Commission notified the Duty to Supply Regulations, 2016 as amended from time to time. Regulation 4.1 of the aforesaid regulations empower Petitioner to recover the 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 direction, 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)

1.32. That the Petitioner further places reliance on Clause 4.2 of the Electricity Supply Code Regulations, 2014 which reads as:

"4.2 licensee's obligation to strengthen/ upgrade/ augment the distribution system and the mode of recovery of the cost thereof:

4.2.3 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 the Commission under Section 46 of the Act.”

1.33. Further under the Electricity Act, 2003 an electricity connection under Section 43 can be provided when the infrastructure required for the supply of electricity is adequate to cater to the load of such consumer. Pertinently, the proviso to Section 43 (1) of the Electricity Act, 2003 provides that where such supply requires the 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 peak load requirement of an area is inadequate and the Petitioner

releases new connections and provides electricity, the provisions of the Electricity Act, 2003 and the underlying objective thereof shall be rendered otiose.

- 1.34. That with respect to the above, the Commission in Case No. HERC/PRO-21 & 23 of 2013 titled as Ansal Build Well v. DHBVN & Ors., while passing the Order dated 20.02.2015 held that the developer is required to install the electrical infrastructure determined as per the 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. The said Order was challenged by way of a Civil Writ Petition No. 2467 of 2013 which was dismissed as being withdrawn.
- 1.35. That the Hon'ble Commission in the plethora of cases has issued directions from time to time to the delinquent developers thereby taking a stringent view on their defaults leading to hardships being caused to the occupants/owners/residents of their projects. Reliance in this regard is placed upon the judgment dated 09.08.2021 of the Hon'ble Commission in PRO-48 of 2020 wherein it was held as under

—
“...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)

- 1.36. That in the matter of Confederation of Real Estate Developers Association of India-Haryana v DHBVN and Ors. (PRO-68 of 2021), the Hon'ble Commission took note of the electrical inadequacies created by the Developers and 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 oppres the right of any genuine consumers 85 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 Sonapat 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."

(Emphasis Supplied)

- 1.37. That the Petitioner vide Sales Circular no. U-21/2020 dated 18.09.2020 circulated a procedure for assessment of the creation of electrical infrastructure as per the approved electrification plan. The said circular categorically specified that the completion certificate whether part or complete can only be issued once the electrical infrastructure for the area in question stands completed in terms of the electrification plan and the bank guarantee has been submitted for the balance work, if any. Seeing the defaults of the developers in the execution of electrical infrastructure, the Petitioner has been making all efforts to set in place a system with adequate checks and balances to avoid hardships being caused to the public at large. A copy of the Sales Circular no. U-21/2020 dated 18.09.2020 is appended.

G. OBLIGATION ON RESPONDENT DEVELOPERS AND CONSUMERS TO BEAR THE COST OF ADEQUATE ELECTRICAL INFRASTRUCTURE.

- 1.38. That the developers are obliged in law as well as contractually (in terms of the 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. If the Developer does not install such adequate electrical infrastructure, the cost

thereof shall have to be borne by the consumers within the Project developed by such developer. This position is emanating from the 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 1 1976 ("1976 Rules");
- b) Electricity Act, 2003;
- c) Duty to Supply Regulations;
- d) Electricity Supply Code; and
- e) Single Point Supply Regulations.

1.39. That what is evident from the foregoing legal framework is that the liability to bear the cost of the electrical infrastructure associated with the creation of any project is that of the developer who develops a project and recovers such cost from the consequent consumer.

H. RELIEFS SOUGHT -

1.40. That, in view of the foregoing submissions, the Petitioner herein is seeking urgent interim relief for the release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/ rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rata basis voluntarily by the plot holders/new applicants in accordance with the revised procedure mentioned in the submissions made above. The Petitioner further seeks action against Respondent no. 1 for defaults in the creation of adequate electrical infrastructure with directions to Respondent no. 1 to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.

PRAYER

In light of the submissions made hereinabove and in the larger interest, this Hon'ble Commission may be pleased to:

- a. Permit Petitioner to recover 'Development Charge(s)' as per Annexure P-8 and Paras 26,27 and 28 stated above, from each of the prospective applicant(s) seeking new connections, consumer seeking grant of additional load (situated within the Projects), subject to adjustment/refund (without interest) on curing deficiencies by the Delinquent Developers or payment of cost thereof (in any of the manner mentioned below), so as to grant immediate despite of granting connections/additional load to applicants/consumers within the Projects in the manner mentioned in Annexure P-8 or any other manner as this Hon'ble Commission may deem fit and proper;
- b. Directions to the Respondent no. 1 to, forthwith: -
 - (i) Complete the electrical infrastructure of the project as per the approved layout;
 - (ii) Pay a sum of money either: -

- (1) In cash deposit equivalent to the cost of curing the aforesaid inadequacies amounting to Rs. 35.16 Crores, 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. Grant ad-interim/interim permission to the Petitioner in terms of the above prayer during the pendency of this Petition;
 - d. Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondent no. 1 and punish each of the persons in-charge of Respondent no. 1'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
 - 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.
2. The case was heard on 05.07.2023, none appeared on behalf of the respondent no.1. Ms. Sonia Madan appearing for the petitioner reiterated the contents of the petition and submitted that the owners/occupants/residents are seeking new electricity connection/additional load within the project area of the developer/respondent no. 1. She submitted that initially the partial load of the instant project has been released on single supply connection, but due to non-development of adequate electrical infrastructure by the developer, the petitioner is unable to cater the demand of the distressed residents/ plot owners, who are facing hardship because of the present scenario. To give an opportunity of being heard, the commission directs the respondent no.1 to appear on the next date of hearing. The Commission directs the petitioner to submit an affidavit explaining whether they plan to extend the load on single point connection after recovering the proposed development charges or to release the individual connection by withdrawing the single point connection and issuing connections to the plot holders individually as no averment/proposal has been made in the petition.
3. **Affidavit of Petitioner dated 20/07/2023**
The petitioner submitted the affidavit in compliance of Commission's directions passed vide order dated 05.07.2023 explaining that the matter regarding release of individual connection by withdrawing of the single point connection was discussed in meeting held on 19.07.2023 with the respondent no.2 i.e. RWA Ansal Sushant City Panipat wherein RWA stated that no skilled staff has been deployed by the developer to maintain the electrical infrastructure. Therefore, they requested to

release the individual connection to the members of RWA instead of single point supply connection. Accordingly, the RWA and respondent no1 submitted their written consent dated 19.07.2023 for disconnection of single point supply connection. Considering the difficulty of the residents, it was decided by the petitioner that subject to approval of the Hon'ble Commission, all residents, already connected through single point connection of Ansal as well as prospective new applicants will apply for electricity connection online and voluntarily make the payment of charges equivalent to the inadequacy of the developer on pro-rata basis. The outstanding amount against the existing single point supply connection will be cleared and the said single point connection will be disconnected

4. The case was heard on 20/07/2023, the Hon'ble Member recuse himself from the proceedings of the instant case. The brief facts of the petition are that the respondent developer has not completed the work of laying electrical infrastructure as per the approved electrification plan, nor has submitted the BG equivalent to the inadequacies in the electrification work due to which the resident/plot holders have been left in lurch and connection are not been released because of non-execution of work. Therefore, the petitioner has prayed before the Commission to direct the respondent developer to complete the requisite infrastructure and as an adinterim relief sought permission to release the connections to the prospective consumers on voluntarily payment of charges equivalent to the inadequacy of the developer on pro-rata basis. Ms. Sonia Madan, Counsel for the petitioner requested to place on record the affidavit in compliance of Commission's directions passed vide order dated 05.07.2023 explaining that the matter regarding release of individual connection by withdrawing of the single point connection was discussed in meeting held on 19.07.2023 with the respondent no.2 i.e. RWA Ansal Sushant City Panipat wherein RWA stated that no skilled staff has been deployed by the developer to maintain the electrical infrastructure. Therefore, they requested to release the individual connection to the members of RWA instead of single point supply connection. Accordingly, the RWA and respondent no1 submitted their written consent dated 19.07.2023 for disconnection of single point supply connection. Considering the difficulty of the residents, it was decided by the petitioner that subject to approval of the Hon'ble Commission, all residents, already connected through single point connection of Ansal as well as prospective new applicants will apply for electricity connection online and voluntarily make the payment of charges equivalent to the inadequacy of the developer on pro-rata basis. The outstanding amount against the existing single point supply connection will be cleared and the said single point connection will be disconnected. Further, it is requested that the Hon'ble Commission may consider to allow the release of

individual connection to the residents as an ad- 3 interim relief on the similar line as allowed in case of TDI vide order dated 05.07.2023 by the Hon'ble Commission. Sh. Parmender Singh, counsel for the respondent no1 appeared before the Commission, and sought additional time of four weeks for filing its reply in the matter. **However, he submitted that his client has no objection on the release of the connection to the residents of the projects as per the proposal of the petitioner.** Upon hearing the parties, the Commission observed that the respondents were given an opportunity to file their reply which has not been filed so far and seek further time for filing the response. However, the representative of RWA and some of the distressed residents/plot holders of the Project appeared before the Commission and submitted their willingness to deposit the proportionate charges equivalent to inadequacy of developer voluntarily for release of connection by the Discoms. In the given circumstances, the Commission recalls its earlier order dated 02.02.2022 (in P.No.55 of 2021) along with last order dated 05.07.2023 wherein the Commission as an ad-interim measure while aiming to resolve the needs of the distressed plot holders/applicants, who were in an urgent need of the electricity connection/additional load and voluntarily opted to pay the proportionate inadequacy charges, allowed the licensee to release new electricity connections/ additional load on voluntary payment of calculated charges by the residents of projects having inadequate electrical infrastructure by the respondent developers. Accordingly, the Commission as an ad-interim measure to help out the distressed residents, allows the petitioner to release the additional load/new connection to the prospective applicant(s) situated within the Projects on voluntary payment of proportionate charges equivalent to the inadequacy of the developer as mentioned in the petition, subject to adjustment/refund (without interest) on curing deficiencies by the delinquent developers or payment of cost thereof. Further, the petitioner is directed to keep a record of the charges paid by the applicant(s) seeking release of new connection/additional load in the Project area and make the same available to the Commission as and when directed to do so. In case, the petitioner recovers the cost of the claimed inadequacies, the aforesaid charges voluntarily paid by the above applicants shall be adjusted/set off in their future energy bills. Further, the Commission again directs the respondent No. 1 to file its reply within four weeks as requested for.

5. IA Filed by Petitioner on 10/10/2023

- 5.1 That the present application is being filed by Uttar Haryana Bijli Vitran Nigam (hereinafter referred to as "UHBVN/Applicant") through Rajesh Arora, Superintending Engineer (Monitoring), Panchkula who is

authorized to file the instant application and is otherwise also is well conversant with the facts of the present case.

- 5.2 That by way of the present application, the Applicant is seeking the limited amendment in the Petition bearing Case no. HERC/Petition no. 34 of 2023 filed on 05.06.2023 in the wake of the subsequent developments that took place post the Order dated 21.07.2023 passed by this Hon'ble Commission. The Hon'ble Commission while considering the interim relief sought by the Applicant qua release of new connections/ extension of load on voluntarily payment of charges equivalent to the inadequacy of the developer on pro-rata basis; vide Order dated 21.07.2023 directed as under-

"6. In the given circumstances, the Commission recalls its earlier order dated 02.02.2022 (in P. No. 55 of 2021) along with last order dated 05.07.2023 wherein the Commission as an ad-interim measure while aiming to resolve the needs of the distressed plot holders/ applicants, who were in an urgent need of the electricity connection/ additional load and voluntarily opted to pay the proportionate inadequacy charges, allowed the licensee to release new electricity connections/ additional load on voluntary payment of calculated charges by the residents of projects having inadequate electrical infrastructure by the respondent developers. Accordingly, the Commission as an ad-interim measure to help out the distressed residents, allows the Petitioner to release the additional load/ new connection to the prospective applicant(s) situated within the Projects on voluntary payment of proportionate charges equivalent to the inadequacy of the developer as mentioned in the petition, subject to adjustment/ refund (without interest) on curing deficiencies by the delinquent developers or payment of cost thereof. Further, the petitioner is directed to keep a record of the charges paid by the applicant(s) seeking release of new connection/ additional load in the Project area and make the same available to the Commission as and when directed to do so. In case, the petitioner recovers the cost of the claimed inadequacies, the aforesaid charges voluntarily paid by the above applicants shall be adjusted/ set off in their future energy bills."

- 5.3 That subsequent to the aforesaid Order dated 21.07.2023; the residents and RWAs had to come forward to deposit development charges as per orders dated 21.07.2023. However, there were agitations and protests by them before various Foras and public meetings with respect to payment of such charges. In order to resolve the issues involved, a meeting was held under the chairmanship of Hon'ble Chief Minister Haryana on 14.09.2023 with respect to the inadequate electrical infrastructure in Ansal Sushant City, Panipat. During the meeting, the members of Respondent no. 2 elucidated their difficulties with respect to payment of development charges by the existing consumers who are being supplied through single-point connection. It was requested that the proposal should be implemented on new consumers only and the existing consumers of the township who are being supplied through single point connection should be exempted from the payment of

development charges. Besides aforesaid, it was further put forth by the Respondent no.2 that the extension load of the existing single point connection of 1400 KW should be allowed along with the creation of the additional 11 KV feeder from the nearby sub-station of the Applicant.

5.4 That after deliberation on the requests made by the members of Respondent no. 2; to address the concerns raised, the proposal with respect to the release of extended load to the allottee's was formulated. The relevant extract of the said proposal reads as under -

- “(i) The residents who are existing consumers although through single point connection of developer are not required to pay development charges.*
- (ii) For deficiency in electrical infrastructure attributed to such existing consumers, the unsold property of the developer will be identified by Town and Country Planning Department and they will take further action for its auction and from the proceeds, as a first charge, the fund of Rs. 10 Cr. will be transferred to UHBVN for creation of sub-station and downstream electrical infrastructure.*
- (iii) For meeting the increased power demand of the township, as an ad-interim arrangement, an additional 11kV feeder will be provided by UHBVN through nearest technically feasible sub-station.*
- (iv) The cost of creation of new 11 independent feeder and other associated electrical equipments and fixtures for supplying additional load through single point connection will be borne by RWA/ developer as per the approved estimates of UHBVN.*
- (v) Similarly for extension of load, the requisite charges as per applicable rules and regulations will also be borne by the developer/residents.*
- (vi) However, for availing such facilities the developer/ RWA shall have to clear all the pending dues of existing single point connection.*
- (vii) For new residential consumer on independent plot or on new floor seeking power connection, the developer/ RWA, will extend the power supply under single point supply after deposit of development charges by the consumer to UHBVN. For extension of load, the existing consumer has to deposit development charges for additional load.*
- (viii) The provisions as applicable for residential consumers would also be applicable for existing and new commercial and community consumers.*
- (ix) The details of existing connections with sanctioned load, plot wise and floor wise either connected through single point supply or*

individual connection through Nigam will be prepared and maintained by RWA and local SDO (OP), so that the new application for electricity connection & enhanced load could be identified for payment of development charges."

- 5.5 That in view of the foregoing proposal approved by the State Government in light of the concerns raised by the allottee's of the project, the Applicant craves the leave of this Hon'ble Commission to suitably amend the interim relief sought in the instant petition and seek the kind indulgence thereof to re-consider the relief sought qua the members of the Respondent no. 2.
- 5.6 That in light of the above submissions, it is most humbly prayed that Annexure P-10 appended along with instant application may kindly be taken on record and Para 40 and Prayer clause of the Petition (mentioned on Page 23 of the Petition) may kindly be substituted as under –

"RELIEFS SOUGHT -

40. That, in view of the foregoing submissions, the Petitioner herein is seeking interim relief for the extension of load of the existing consumers/ allottee's subject to conditions mentioned in the proposal formulated/ decision taken in the meeting dated 14.09.2023 (Annexure P-10) and permit release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/ rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rata basis as stipulated in proposal formulated/ decision taken in the meeting dated 14.09.2023 (Annexure P-10). The Petitioner further seeks action against Respondent no. 1 for defaults in the creation of adequate electrical infrastructure with directions to Respondent no. 1 to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.

PRAYER

In light of the submissions made hereinabove and in the larger interest, this Hon'ble Commission may be pleased to:

- a. Permit Petitioner to provide an additional 11kV feeder through nearest technically feasible sub-station for meeting the increased power demand of the township;*
- b. Permit Petitioner to grant extension of load to existing consumers of the project who are being supplied through single point supply connection currently on payment of requisite charges as per applicable rules and regulations and clearing of all outstanding dues*

of the existing single point connection subject to them bearing the cost of creation of new 11KV independent feeder and other associated electrical equipments and fixtures for supplying additional load as per conditions stipulated in the minutes of meeting dated 14.09.2023 (Annexure P-10) which shall be adjusted/refunded (without interest) on curing deficiencies by the Delinquent Developers or payment of cost thereof (in any of the manner mentioned below).

- c. Permit Petitioner to recover 'Development Charge(s)' as per Annexure P-8 and Paras 26,27 and 28 stated above, from each of the prospective applicant(s) seeking new connections subject to adjustment/refund (without interest) 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 new connections to applicants/consumers within the Projects in the manner mentioned in Annexure P-8 or any other manner as this Hon'ble Commission may deem fit and proper;*
- d. Directions to the Respondent no. 1 to, forthwith: -*
- (i) Complete the electrical infrastructure of the project as per the approved layout;*
 - (ii) Pay a sum of money either: -*
 - (1) In cash deposit equivalent to the cost of curing the aforesaid inadequacies amounting to Rs. 35.16 Crores, 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;*
 - (4) Grant ad-interim/interim permission to the Petitioner in terms of the above prayer during the pendency of this Petition;*
 - (5) Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondent no. 1 and punish each of the persons in-charge of Respondent no. 1'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*
 - (6) 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."*

5.7 That the foregoing amendments are pertinent in the wake of the subsequent developments elucidated above. The present application has been made bonafide and in the interest of justice.

PRAYER

In light of the submissions made hereinabove and in the larger interest, this Hon'ble Commission may be pleased to –

- a) Allow the instant application;
 - b) Allow placing on record of Annexure P-10 i.e. minutes of meeting dated 14.09.2023;
 - c) Allow amendment of the 'Reliefs Sought' and the 'Prayer Clause' in the instant petition as mentioned in Para 6 of the present application;
 - d) Pass fresh Orders with respect to grant of interim relief sought in the instant petition in light of the amendments made through the present application; And / Or
 - e) Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
6. The case was heard on 11/10/2023, none appeared on behalf of the respondents. Ms. Sonia Madan appearing for the petitioner re-iterated the contents of the IA filed in this case and submitted that subsequent to the Commission's Order dated 21.07.2023, the residents and RWAs started agitations and protests before various Foras and public meetings with respect to payment of such charges. In order to resolve the issues, a meeting was held under the chairmanship of Hon'ble Chief Minister Haryana on 14.09.2023 with respect to the inadequate electrical infrastructure. The members of Respondent no. 2 elucidated their difficulties with respect to payment of development charges by the existing consumers who are being supplied through single-point connection. It was requested that the proposal should be implemented on new consumers only and the existing consumers of the township who are being supplied through single point connection should be exempted from the payment of development charges. Further, the extension load of the existing single point connection of 1400 KW should be allowed along with the creation of the additional 11 KV feeder from the nearby sub-station of the Applicant. 1. That after deliberations, the proposal with respect to the release of extended load to the allottee's was formulated on the following lines –
- “(i) The residents who are existing consumers although through single point connection of developer are not required to pay development charges.
 - (ii) For deficiency in electrical infrastructure attributed to such existing consumers, the unsold property of the developer will be identified by Town and Country Planning Department and they will take further action for its auction and from the proceeds, as a first charge, the fund of Rs. 10 Cr. will be transferred to UHBVN for creation of sub-station and downstream electrical infrastructure.

- (iii) For meeting the increased power demand of the township, as an ad-interim arrangement, an additional 11kV feeder will be provided by UHBVN through nearest technically feasible sub-station.
- (iv) The cost of creation of new 11 independent feeder and other associated electrical equipments and fixtures for supplying additional load through single point connection will be borne by RWA/ developer as per the approved estimates of UHBVN.
- (v) Similarly, for extension of load, the requisite charges as per applicable rules and regulations will also be borne by the developer/residents.
- (vi) However, for availing such facilities the developer/ RWA shall have to clear all the pending dues of existing single point connection.
- (vii) For new residential consumer on independent plot or on new floor seeking power connection, the developer/ RWA, will extend the power supply under single point supply after deposit of development charges by the consumer to UHBVN. For extension of load, the existing consumer has to deposit development charges for additional load.
- (viii) The provisions as applicable for residential consumers would also be applicable for existing and new commercial and community consumers.
- (ix) The details of existing connections with sanctioned load, plot wise and floor wise either connected through single point supply or individual connection through Nigam will be prepared and maintained by RWA and local SDO (OP), so that the new application for electricity connection & enhanced load could be identified for payment of development charges."

Ms. Sonia Madan further submitted that in view of the foregoing proposal approved by the State Government, the applicant craves the leave of this Hon'ble Commission to suitably amend the interim relief sought in the instant petition and seek the kind indulgence thereof to re-consider the relief sought qua the members of the respondent no. 2. After hearing the contention of the petitioner, the commission decides to amend the interim order to the extent as prayed for and the IA is disposed off, accordingly. The Commission further observes that the respondent-developer has not filed the reply despite sufficient opportunity. The commission directs respondent-developer to file the reply within three weeks.

7. Reply of Respondent No. 1 (05/02/2024)

- 7.1 The answering Respondent, i.e. Ansal Properties and Infrastructure Limited ("Respondent"), is filing the instant response to the petition filed by the Petitioner/ UHBVN.

MAINTAINABILITY AND JURISDICTION:

- 7.2 Firstly, it is settled law that the Hon'ble Commission, being a statutory tribunal, cannot travel beyond the provisions of the Electricity Act, 2003. In this regard reference is made to the judgement of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd., (2017) 16 SCC 498,
- 7.3 Further, the Hon'ble Supreme Court of India, very categorically, in its constitution bench judgement in PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603, clarified that an Electricity Regulatory Commission only has administrative, adjudicatory and legislative functions.
- 7.4 The Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd., (2007) 8 SCC 381, has held that as per section 86 of the Act, the State Commission does not have jurisdiction to adjudicate disputes with individual consumers. The jurisdiction of the Hon'ble Commission is only with respect to adjudication of disputes inter-se between licensees and/or generating companies, which is not the case here.
- 7.5 The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755, clearly held that the State Electricity Regulatory Commission ("SERC") has jurisdiction to adjudicate all disputes inter-se between licensees and generating companies.
- 7.6 In the present case the Petitioner is a distribution licensee but the Respondent No. 1 is neither a licensee of this Hon'ble Commission nor a generating company.
- 7.7 Considering the above-settled principles of law, the jurisdiction of this Hon'ble Commission and the maintainability of the present Petition may be considered. The principal sections invoked by the Petitioner for filing of present petition are sections 43, 46 and 50 of the Act.
- 7.8 A bare perusal of the petition makes it clear that the Petitioner has not identified what is the difficulty it is facing in the implementation of the 2016 Regulations and the Supply Code. The Petitioner has also not identified the implementation of which regulations is creating difficulty for it. The "*Removal of Difficulty*" are nicknamed as "*Henry VIII clauses*" in England.
- 7.9 The Hon'ble Supreme Court in *Madava Upendra Sinai* (supra) enumerated the conditions subject to which the power to remove difficulties could be exercised. The "*Removal of Difficulty*" clause, as worded in the 2016 Regulations and the Supply Code, have a precondition regarding the existence of a difficulty. Therefore, without a prior difficulty in the implementation of the 2016 Regulations and the Supply Code, and without them clearly being pointed out specifically, i.e. the regulations qua which there is a difficulty in implementation, the invocation of the power of difficulty by the Petitioner is without any basis and therefore, there is no jurisdiction to entertain the present petition under those heads.

- 7.10 Further, it is settled law that the power to give directions is only available over subject matter within the jurisdiction of this Hon'ble Commission, which is not the case here.
- 7.11 Further the Petitioner has relied on sections 142 and 146 of the Act, to invoke the jurisdiction of this Hon'ble Commission.
- 7.12 A bare perusal of section 142 makes it clear that this Hon'ble Commission can act against persons for violation of provisions of the Act or the regulations framed thereunder. Further, the procedure to be adopted for proceedings under section 142 has been prescribed under Appeal No. 183 of 2010 in BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2011 SCC OnLine APTEL 56 : [2011] APTEL 56.
- 7.13 Further, the Hon'ble Supreme Court in R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400, has held that contempt proceedings cannot be clubbed with compensation proceedings. Here in the present petition, on one hand the Petitioner is invoking sections 142 and 146 of the Act, and on the other hand, the Petitioner is seeking monies from various developers without disclosing either the calculation or basis for seeking such an amount in the first place.
- 7.14 From a bare perusal of the Petition it is clear that the Petitioner has not identified any of the orders of this Hon'ble Commission of which there is a wilful non-compliance and neither has the Petitioner pointed out any specific provision or regulation which has not been complied by the Respondent No. 1. Thus, even section 142 of the Act is not attracted under the circumstances.
- 7.15 Similarly, for attracting section 146 of the Act, none of the parameters have been met and therefore, the present petition is not maintainable on this account as well.

RELIEFS SOUGHT ARE NOT MAINTAINABLE IN PRESENT FORM

- 7.16 The Petitioner's first prayer is regarding recovery of 'Development Charge(s)' from prospective consumers. As per Regulation 20 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 ("Conduct of Business Regulations"), all matters having an impact on retail supply tariff are to be conducted through a public hearing.
- 7.17 Infact this Hon'ble Commission had already issued public notice for the petition around 12.01.2022 which itself shows that the Hon'ble Commission considers the present petition to be pertaining to issues regarding tariff. Therefore, the correct form of seeking prayer 'a' would be the Multi-Year Tariff petition.
- 7.18 As far as prayer 'b' is concerned, a bare perusal of the petition makes it evident that the Petitioner is seeking to enforce obligations, if any, under 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”). As this Hon’ble Commission is subject to the provisions of the Act and is a creature of that statute, the obligations arising under other enactments cannot be looked at by this Hon’ble Commission. Further, obligations of the Respondent No. 1, if any, under the 1975 Act and 1976 Rules, have to be adjudicated upon in terms of the said enactments and they cannot be raised and adjudicated upon pursuant to the present Petition. Further, issues raised by the Petitioner qua 1975 Act and 1976 Rules will necessarily involve adjudication between the Petitioner, and the Respondent No. 1, and the same is beyond the purview of section 86 of the Act, Therefore, even under the Act, the present Petition is not maintainable.

- 7.19 Further, the Petitioner has deliberately not made Department of Town and Country Planning (“DTCP”) a party before this Hon’ble Commission as there is no jurisdiction in law wherein directions against the said department can be passed under the Act. Further, the present petition is liable to be dismissed for misjoinder of cause of action. Even otherwise, Petitioner’s reliance on any similar proceedings, including the Case No. HERC/ Petition No. 67 of 2022, is incorrect. Since each developer is on a different footing and each case has different facts and circumstances, such a reliance is unjustified.

REPLY ON MERITS:

- 7.20 Petitioner states at pages 64 and 65 (Annexure P-8) that Respondent No. 1’s inadequacy amounts to a total of Rs. 35.16 crores. Petitioner is put to strict proof of its allegation. It is submitted that the Respondent No. 1 has already paid the legally valid requisite external development charges. Arguendo and without prejudice to the above, if at all any deficiency is there then the remedy of the Petitioner is as per the 1975 Act and 1976 Rules and not under the Act by way of the present Petition.
- 7.21 Even under the underlying rules and regulations pursuant to the Real Estate (Regulation and Development) Act, 2016 the Respondent No. 1 had no obligations and consequently, is not in default thereto for providing adequate electrical infrastructure. As stated previously, this obligation solely lies on the Petitioner and not the Respondent No. 1.
- 7.22 In conclusion, the Petitioner has an oblique motive to shirk its responsibility and pass on the same incorrectly to the developer (i.e., Respondent No. 1) by defeating the purpose of the beneficial legislation (which was meant to benefit the electricity consumers). In sum, this exercise by the Petitioner is a “sham” and thus, this Petition is liable to be dismissed for the reasons as explained below:

PARAWISE REPLY:

- 7.23 It is specifically denied that Respondent No. 1 has failed to meet the obligations as per the established law and ought to be categorised as a “delinquent” developer.
- 7.24 It is specifically denied that there is an urgency to provide interim solution, as sought in the present petition, as the distribution licensee is duty bound under the Act, especially section 43, to provide connections to new consumers. It is also denied that the relief sought by the Petitioner in its present form is maintainable.
- 7.25 It is submitted that from the factual matrix, as stated in the petition, it is clear that the Petitioner has not acted bona fide and has not taken any steps required under law , prior to the filing of the instant Petition. Under the Act, as per section 42, it is the duty of the distribution licensee to develop and maintain and efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity. A bare perusal of section 42 makes it clear that under the provisions of the Act, it is the duty of the distribution licensee to first “develop” and thereafter “maintain” a “distribution system”. A distribution system has been defined under section 2 (19) of the Act. Further, Rule 4 of the Electricity Rules, 2005 (“2005 Rules”) further defines as distribution system. A bare perusal of the definition of “distribution system” makes it clear that the high powered lines, sub-station, et cetera are all part of the distribution system and under section 42 of the Act. It is the duty and obligation of the distribution licensee to not only develop but also to maintain the said distribution network. Develop connotes to expand and to grow, therefore, clearly to establish and grow the distribution system within its area of supply, is the duty and obligation of the distribution licensee. Under section 43 of the Act the obligation of the distribution licensee to supply upon request has been provided and the obligation to do so has been sanctified. A bare reading of the sections 42 and 43 of the Act make it clear that the distribution licensee is under an obligation to create the necessary infrastructure to supply to the consumers.
- 7.26 It is denied that Respondent No. 1 was obligated to develop was under an obligation to create the necessary infrastructure to supply to the consumers. Instead, it is the distribution licensee, which must first “develop” and thereafter “maintain” a “distribution system”.
- 7.27 It is also denied that the Petitioner or the Respondent No. 2 are entitled to any reliefs, much less the requested interim relief sought through this Petition.
- 7.28 It is denied that Respondent No. 1 first, failed to develop adequate electrical infrastructure and second, is liable to pay any development charges or cure deficiencies to the electrical infrastructure. It is also denied that the Petitioner or the Respondent No. 2 are entitled to any reliefs, much less the requested interim relief sought through this Petition.

- 7.29 It is denied that demand notice dated 18.08.2021 was received by the Respondent No. 1. It is further denied that Respondent No. 1 is liable to pay any amount, much less the “calculated” “inadequacy amount” of Rs. 31.56 crores. It is stated that the absence of adequate electrical infrastructure is an unfulfilled obligation of the Petitioner and not the Respondent No. 1. Accordingly, it is denied that there is an urgency to provide interim solution, as sought in the present petition, as the distribution licensee (the Petitioner) is duty bound under the Act, especially section 43, to provide connections to new consumers.
- 7.30 It is denied that Respondent No. 1 has failed to meet its obligations, if any, to install adequate electrical infrastructure and is subsequently liable to bear costs (as stated or otherwise). It is further denied that Respondent No. 2 would be entitled to seek recovery of any amount paid for the alleged (although incorrectly stated) failure of Respondent No. 1 to provide adequate electrical infrastructure.
- 7.31 It is denied that Respondent No. 1 was obligated to develop adequate electrical infrastructure, which is the obligation of the distribution licensee under the Act. As previously stated, Under sections 43, 46 and 50 there is no provision for any adjudication of the sort as has been prayed for under the present petition. These provisions do not enable exercise of jurisdiction for the purposes of the present petition preferred by the distribution licensee before this Hon’ble Commission. It is also stated that Petitioner’s failure to identify the “difficulty” in the implementation of the 2016 Regulations and the Supply Code is fatal to the application of invocation of the power of difficulty by the Petitioner is without any basis and therefore, there is no jurisdiction to entertain the present petition under those heads.
- 7.32 It is specifically denied that the Petitioner has established any defaults at the Respondent No. 1’s end.
- 7.33 It is denied that Respondent No. 1 is liable to develop electrical infrastructure, which is the duty of the distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity. It is also denied that Respondent No. 1 would be obligated to pay any charges, much less the amount claimed, since it is not in violation of its obligations. Respondent No. 1 reiterates that Petitioner is seeking enforcement of obligations, if any, under the 1975 Act and the 1976 Rules. As this Hon’ble Commission is subject to the provisions of the Act and is a creature of the statute, the obligations arising under other enactments cannot be looked at by this Hon’ble Commission. Further, obligations of the Respondent No. 1, if any, under the 1975 Act and 1976 Rules, have to be adjudicated upon in terms of the said enactments and they cannot be raised and adjudicated upon pursuant to the present Petition. Further, issues raised by the Petitioner qua 1975 Act and 1976 Rules will necessarily involve adjudication between the Petitioner, and

the Respondent No. 1, and the same is beyond the purview of section 86 of the Act rendering this Petition not maintainable. As previously stated, the Petitioner has deliberately not made DTCP a party before this Hon'ble Commission as there is no jurisdiction in law wherein directions against the said department can be passed under the Act. In any event, since each developer is on a different footing and each case has different facts and circumstances, any alleged averment based on a generalised understanding of a contractual agreement would not be applicable.

7.34 Therefore, in light of the above submissions, it is prayed that the present Petition is without jurisdiction and without any merits and therefore, it ought to be dismissed as such, it is prayed accordingly.

8. The case was heard on 28/02/2024, Ms. Sonia Madan appearing for the petitioner submitted that the copy of the reply submitted by the respondent developer has been received and requested for short adjournment for filing rejoinder to the same. Acceding to request, the Commission directs petitioner to file its rejoinder with in 2 weeks with an advance copy to respondent and further directed both parties to be present for final arguments on next date.

9. Rejoinder of petitioner (18/03/2024)

9.1 The present rejoinder is being filed on behalf of Uttar Haryana Bijli Vitran Nigam Limited/Petitioner ("UHBVN) as response to the reply filed by the Respondent in the above captioned petition.

9.2 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.

9.3 At the outset, the Petitioner denies all and singular allegations, contentions and submissions of the Respondent which is contrary to or inconsistent with what is stated in petition, except those which are matters of record and/or specifically admitted herein. The Petitioner should not be deemed to have admitted any of the allegations, contentions or submissions of the Respondent unless specifically admitted herein.

9.4 The defences raised by the Respondent no. 1 in the reply are summarized hereunder, which shall be adverted to head-wise in detail hereunder -

- a) The present petition is not maintainable and outside the jurisdiction of the Hon'ble Commission;
- b) There is no wilful non-compliance of directions of the Hon'ble Commission and as such the petition is not tenable under Section 142 and 146 of the Electricity Act, 2003;
- c) Reliefs sought are not maintainable in its present form as Petitioner is seeking to enforce obligations of the Haryana Development and

Regulation of Urban Areas Act, 1975 and rules framed thereunder and the recovery of development charges shall be through filing of petition under MYT Regulations; and

- d) Petition is liable to be dismissed for mis-joinder of cause of action as Department of Town and Country Planning (DTCP) has not been made party to the Petition.

RE: THE PRESENT PETITION IS NOT MAINTAINABLE AND OUTSIDE THE JURISDICTION OF THE HON'BLE COMMISSION -

- 9.5 At the outset, it is submitted that vide order dated 21.07.2023 passed in the present Petition, the Hon'ble Commission was pleased to grant an immediate relief to the distressed residents of the Sushant City, Panipat developed by the Respondent no. 1 to the effect that Petitioner was allowed to release additional load/new connections to the allottee's on voluntary payment of proportionate charges equivalent to inadequacy of the developer. The said interim relief was subject to adjustment/refund on curing deficiencies by the delinquent developers or on payment of cost thereof. At the time of passing of said order, Respondent no. 1 was duly present before the Hon'ble Commission and no question as to maintainability of instant Petition was raised. The grant of interim relief in the instant case was based on the backdrop of delinquencies of the Respondent no. 1 and was co-terminus to adjudication with respect to the default of the Respondent no.1. As such, the objection with respect to maintainability of the instant Petition and the subject matter being outside the jurisdiction has been raised as an afterthought.

A. Statutory framework that empowers Hon'ble Commission to issue directions with respect to delinquency of the developer -

- 9.6 It is the case of the Respondent no. 1 that this Hon'ble Commission has no powers to check the delinquency in the construction of electrical infrastructure by them and to issue any directions with respect to the same. The said contention is based on erroneous interpretation of the statutory provisions and the mis-appreciation of the legal position. Section 86 of the Electricity Act, 2003 empowers Hon'ble Commission to exercise adjudicatory, regulatory as well administrative functions so as to give effect to the intent and purpose enshrined under Electricity Act, 2003 as a Regulatory Body. Section 86(1)(i) and (k) empowers the Hon'ble Commission to specify or enforce standards with respect to quality, continuity and reliability of service by licensees and to discharge functions as it may be assigned to it under this Act. The Electricity Act, 2003 provides functions to be exercised by the State Electricity Commissions, which besides adjudicatory function, contains various regulatory and administrative functions which emanates from the legislative capacity of the Hon'ble Commission. The power of the licensee to ensure quality, continuity and reliability of service is

governed by various regulations notified by this Hon'ble Commission. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the developer/builder emanating from the regulations of the Hon'ble Commission which has a statutory force. Completion of such electrical infrastructure is essential for the licensee to provide reliable, continuous and quality electric supply to the residents of the State and as such, the Hon'ble Commission has wide powers to ensure that the electrical infrastructure of the State is developed to its adequate level and there is no violation of the regulations of the Hon'ble Commission by the persons directed to discharge specific obligations enshrined under such regulations.

9.7 Considering the wide functions of this Hon'ble Commission under Section 86 of the Act, the jurisdiction of this Hon'ble Commission under Section 43, 46 and 50 of the Electricity Act, 2003 is wide enough to deal with the subject matter of the instant petition. Section 43 of the Electricity Act, 2003 provides statutory obligation of universal supply, which can be fulfilled only when the 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 UHBVN releases new connections and provides electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose.

9.8 In supplemental to the above made submissions, this Hon'ble 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.

It is pertinent to note that 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. The Electric Utilities are required to have an infrastructure in place for the purposes of supplying electricity to consumers. They have to incur operation and maintenance costs to be in readiness to supply electricity. The liability to build such infrastructure to cater to effective electrical supply for a project has to be fastened to the project developer as otherwise such charges would ultimately be borne by the general consumers since this would be factored in the fixation of tariff. It is for this reason that the license condition also casts an obligation on the

Petitioner to develop electrical infrastructure. The contentions raised by the Respondent no. 1 qua its responsibility to develop electrical infrastructure is incorrect and only a feeble attempt to cover up their defaults.

- 9.9 In terms of Section 46 of the Act, this Hon'ble 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 ("Duty to Supply 2016 Regulations"). Regulation 4.6 of the Duty to Supply 2016 Regulations also 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.
- 9.10 Further, 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 Regulation.
- 9.11 The defaults of the Developer regarding non-creation of adequate electrical infrastructure as per approved electrification plan was a consideration in the notification 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 Supply Regulations, 2020'). Considering foregoing observations, Second proviso to Regulation 6.1. (a) of Single Point Supply Regulations, 2020 provided 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.

The Observation of the Hon'ble Commission referred to above evinces that the Commission has power to regulate the development of electrical infrastructure by the Developer as per approved electrification plan to

- ensure discharge of its function enshrined in Section 86(1)(i) of the Electricity Act, 2003.
- 9.12 In view of the Regulation 4.12 read with Regulation 3.10 of the Duty to Supply Regulations, the liability to bear cost of distribution system etc. shall be rightfully borne by the builder, who develops a project and assures to provide all essential amenities to the consumers of such project. The Respondent no. 1 is therefore, bound to bear the cost of electrical infrastructure to be installed as per electrification plan sanctioned under the Supply Code.
- 9.13 The aforesaid provision of Regulation 4.12.2 was amended by the Hon'ble Commission on 19.03.2020.
- 9.14 Regulation 4.2.3 read with Regulation 4.2.4 of the Supply Code also 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 shall have to be borne by the aforesaid developers/builders.
- 9.15 It is further worthwhile to mention that the Haryana Development & Regulation of Urban Areas Act 1975 ("HDRUA") signifies the development of infrastructure works and also casts a duty upon the developers to complete the development/installation of electrical infrastructure as per the license and agreement with Directorate of Town and Country Planning ("DTCP"). Developers have to submit the final completion certificate under Rule 16 of the HDRUA. It is submitted that the non-grant of completion certificate by DTCP for these projects in question signifies that the works in the colony developed by the developer are incomplete and its obligation under HDRUA Act, 1975 as well as the Electricity Act, 2003 and Regulations framed thereunder as emphasised above, have not been discharged.
- 9.16 It is submitted that only after the completion of all works and the grant of completion certificate by DTCP, does the obligation of the Distribution Licensee (Petitioner herein) arise under the Duty to Supply Regulations to take over the electrical infrastructure in that area. In case of inadequate infrastructure, the system cannot be taken over by UHBVN.
- 9.17 The Electrification Scheme/Plan sanctioned by the Respondent is prepared as per the regulatory framework notified by this Hon'ble Commission and is a document governed by the jurisdiction of this Hon'ble Commission. As per the said electrification plan, the total load is approved for the project and the same was to be fed from the electrical infrastructure to be constructed by the builder, for which conditions are also stipulated in the order in consonance with the regulatory framework. The conditions of electrification plan are an obligation of the developer and any defaults in fulfilment of such obligations affects the quality, continuity and reliability of power supply, which is to be regulated by this Hon'ble Commission.

- 9.18 The Duty to Supply Regulations, (3rd Amendment) Regulations, 2023 provides detailed mechanism for recovery of External Electrical System Development Charges (EESDC). The mechanism enshrined under Regulation 4.17.2 of the said amendment has been defeated considering the defaults of the developer, as is in the instant case and to ensure that such delinquencies are not experienced in future. The Hon'ble Commission has ample powers to regulate the matters concerning distribution of supply to the consumers and such powers are not limited to legislative capacity alone.
- 9.19 The Electricity Act 2003 is a complete code for generation, supply, transmission, distribution and trading of electricity and appropriate Commission is fully empowered to grant the relief prayed for after considering the nature of the relief in the light of the provisions of the Electricity Act, 2003, National Electricity Policy and National Electricity Rules and other Regulations framed there under. A conjoint reading of the provisions of the Electricity Act 2003 and regulations framed thereunder, vest the power with this Hon'ble Commission to regulate development of electrical infrastructure in the State to ensure a robust and reliable electrical supply to the consumers of the State.
- 9.20 Thus, it emanates from the statutory provisions mentioned above as well as the regulations framed thereunder that once a builder/developer has chosen to install electricity infrastructure on its own, it is the bounden duty of the developer in terms of the extant regulations to ensure that such infrastructure is adequately installed, and the Distribution Licensee is entitled to recover appropriate expenses directly from the Developer for all electrical works and supply of electricity. Considering the basic and overriding purpose of Electricity Act, 2003 being ensuring generation of electricity and efficient equitable distribution thereof with the interest of the consumers in mind, the Commission has full jurisdiction to regulate issues concerning distribution of electricity and other necessary concomitance thereto.

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

- 9.21 This Hon'ble Commission has already taken cognizance of settled obligations of the builders/ developers and has also dealt with the issue of directions to be passed to the Developer for inadequacy of electrical infrastructure to be built by them. It is noteworthy here to refer to the Order of the Hon'ble Commission dated 4.10.2023 in Petition no. 39 of 2022, wherein similar issue, as is forming subject matter of instant petition, was involved and objection as regards jurisdiction of the Hon'ble Commission was taken by the Respondent. In the said Order, directions were issued to the Developer to complete work within a period of 9 months and submit monthly progress report to the DHBVN as well as the Commission. Further, it was ordered that the DHBVN will be at

liberty to approach the Commission in case the Developer doesn't fulfil its obligation in the time bound manner.

- 9.22 The Hon'ble Commission in its Order dated 09.08.2021 passed in Anandvilas 81 Resident Welfare Association v. DHBVNL, HERC/PRO48/2020 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."
- 9.23 Directions have also 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 BuildWell v. DHBVN &Ors. It was held that Ansal Build Well is liable to cure the electrical inadequacy. The said order has been challenged vide CWP No. 6460 of 2015 and 6452 of 2016 and the same are pending for adjudication. However, no stay has been granted in the matter.
- 9.24 This Hon'ble Commission in its order dated 09.08.2021 passed in HERC PRO NO. 48 of 2020 also held that it is obligatory on the part of developer to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of electrical infrastructure for the licensed area before release of electrical connection for which compliance is required to be made by developer. Vide this judgement, it is already decided by this Hon'ble Commission that it is obligatory on the part of developer/Respondent to deposit bank guarantee for the development of electrical infrastructure. Thus, the issue of jurisdiction contended by the Respondent is untenable being already settled.
- 9.25 In context of grant of electricity connection, in areas where there exist electrical inadequacies, this Hon'ble Commission in Case No. HERC/PRO68/2020, *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 Sonapat 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.” (Emphasis Supplied).

Thus, in light of foregoing Orders, Hon'ble Commission has already adjudicated on the issue of jurisdiction and decided that this Hon'ble Commission has jurisdiction to decide such issue as raised in present petition.

C. Tenability of invocation of “Removal of Difficulty” clause in the Petition -

9.26 It is the contention of the Respondent that the Petitioner has failed to identify the difficulty faced in the implementation of the Regulations framed by this Hon'ble Commission. It has been clearly specified in the Petition that due to lack of adequate electrical infrastructure there has been a serious prejudice caused to the Petitioner as well as members of the Respondent no. 2. In fact, this Hon'ble Commission while taking cognizance of this difficulty has been pleased to pass interim order to ease the hardship caused to the consumers.

9.27 Regulation 8 and 9 of the Duty to Supply Regulations, 2016 empowers this Hon'ble Commission to issue directions and orders as considered

appropriate for implementation of these Regulations and to remove any difficulty which may arise in giving effect to the provisions of the Regulations.

In view of the above referred Regulations, this Hon'ble Commission has the jurisdiction to issue directions as well as to remove difficulties for the implementation of the Duty to Supply Regulations.

- 9.28 Further, Regulation 16 of the Supply Code also provides a "removal of difficulty" clause.
- 9.29 It is the contention of the Respondent that the Petitioner has failed to identify the difficulty faced in the implementation of the Regulations framed by this Hon'ble Commission. It has been clearly specified in the Petition that due to lack of adequate electrical infrastructure, there has been a serious prejudice caused to the Petitioner as well as buyers of the premises in Projects. It is the difficulty of the Petitioner that it cannot in law take over the deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity. Therefore, the powers to remove difficulty has been rightly pleaded by the Petitioner iterating the difficulty in its obligation to supply electricity to the consumers at large on account of inadequate infrastructure as well the provisions of the Duty to Supply Regulations stated above. Hon'ble Commission has the prerogative and jurisdiction to exercise this power to remove such difficulty.
- 9.30 The reliance of the Respondent on the decision in the case of *Madava Upendra Sinai Vs. Union of India* (1975) 3 SCC 765 is incorrect. The difficulty in giving effect to the Regulations is fortified from the fact that no constructive action could be taken by the Petitioner against the Respondent for acting contrary to the Regulations. In the case of in the case of *Madava Upendra Sinai*(supra), the principle had been settled, namely, that the power to remove difficulties is vested in the Authority to make adjustments for implementing effectively the provisions of the Act without touching its substance as long as the scheme and essential provisions of the Act is not changed. The above clearly implies that the power to remove difficulties can be exercised validly so long as the scheme and essential provisions of the Act are not changed and adjustments are made to implement effectively the provisions of the Regulations without making a change in the substance.
- 9.31 In terms of the settled principle of law relating to "removal of difficulty" clauses and their invocation as stated above, the Petitioner has thoroughly furnished as to how the lack of adequate infrastructure on account of the Respondent is consonant with the difficulty faced by the Petitioner in performing its duty to supply electricity to the consumers under the Electricity Act and the Regulations reproduced above. The scheme of the Electricity Act, 2003 and the power accorded to this Hon'ble Commission to frame regulations has to be read harmoniously

to establish the need for removing difficulty caused by Respondent in giving effect to the Regulations.

9.32 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.

9.33 The Petitioner has rightly invoked the said provisions of the extant regulations in the present petition.

D. *The Obligation of Developer to cure inadequacies/ settle the cost of the same with the licensee is no longer res-integra -*

9.34 The Respondent has contended that it is the responsibility of the Distribution Licensee to meet the demand of the electricity and the requisite infrastructure for the same shall be built by the Licensee, for which cost shall be recovered through Annual Revenue Requirements (ARR). The said contention is not only based on an erroneous position of law but is also unjustified and unreasonable. The liability for failure of the Developer to build electrical infrastructure in terms of its obligations to ensure robust and reliable electrical supply cannot be fastened to the larger consumers. In the event, the cost of deficient electrical infrastructure is borne by the Distribution Licensee, the consequential financial burden of this default on part of Developer will fall upon all consumers of Haryana who although do not reside in those projects will have to bear such cost.

9.35 Developers are obliged in law as well as contractually to install such electrical infrastructure as may be adequate to cater the 'ultimate load' within the area developed by them. 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 various laws such as:-

- i. 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");
- ii. Electricity Act, 2003;
- iii. Duty to Supply Regulations;
- iv. Supply Code; and
- v. Single Point Supply Regulations.

The issue of inadequacies has time and again been brought before the Commission in various cases. In pursuance to the power given to Distribution Licensee under Regulation 4.1 of the Duty to Supply Regulations and similar such provisions under various regulations, the Hon'ble Commission has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.

RE: THERE IS NO WILFUL NON-COMPLIANCE OF DIRECTIONS OF THE HON'BLE COMMISSION AND AS SUCH THE PETITION IS NOT TENABLE UNDER SECTION 142 AND 146 OF THE ELECTRICITY ACT, 2003 -

9.36 The respondent, in complete disregard of the law and the categorical orders passed by this Hon'ble Commission, contends that Section 142 and 146 of the 2003 Act are not attracted since there has been no non-compliance of directions or orders or contravention of provisions of the Act or the rules or regulations made thereunder. It is submitted that the Petitioner has invoked the above said sections by keeping in mind all the provisions of the Act as well as the Regulations and orders passed by this Hon'ble Commission mentioned above.

9.37 The issue as regards the obligation of the Developer to cure the inadequacy in the development of electrical infrastructure for the project has been well settled by the Hon'ble Commission vide various orders referred hereinabove. In light of the statutory provisions and such precedents, it is obligatory on the part of Developer to get the electrification plan approved from DISCOM as per ultimate load requirement, install electrical infrastructure in terms of the sanctioned plan and to deposit the requisite bank guarantee for development of electrical infrastructure for the licensed area before release of electrical connection to ensure development of adequate electrical infrastructure.

9.38 As far as the issue of compensation vis-à-vis contempt is concerned, it is submitted that Section 142 contains the word any order, which has a wide import and it has been an admitted position that despite of orders passed with respect to issue involved in the present petition, Respondent has failed to comply with the said judgement. It is pertinent to mention that the orders passed by this Hon'ble Commission is not an order in persona but an order in rem 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 various cases. In pursuance to the power given to Distribution Licensee under Regulation 4.1 of the 2016 Regulations, commission has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.

RE: RELIEFS SOUGHT ARE NOT MAINTAINABLE IN ITS PRESENT FORM AS PETITIONER IS SEEKING TO ENFORCE OBLIGATIONS OF THE HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS ACT, 1975 AND RULES FRAMED THEREUNDER AND THE RECOVERY OF DEVELOPMENT CHARGES SHALL BE THROUGH FILING OF PETITION UNDER MYT REGULATIONS;

9.39 The Respondent has contended that the relief sought by the Petitioner regarding recovery of Development Charges from the prospective consumers will have an impact on retail supply tariff which ought to be conducted through public hearing Multi-Year Tariff Petition to be filed by the Petitioner. Firstly, the prayer for recovery of Development charges is subject to offsetting the same from the amount of inadequacy for an immediate extension/augmentation of the electrical infrastructure. This recovery is merely in the nature of lien which is required in the extraordinary circumstances of the Respondent not curing the inadequacy in the project. The development charges are not an income for the Petitioner and has no bearing on the retail supply tariff. Secondly, the Hon'ble Commission has been requested to invoke its inherent powers for granting immediate relief to certain affected consumers of the identified delinquent developers. It was in this view of the matter that an immediate relief was allowed 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. The aforesaid charges voluntary paid by the above applicants shall have be adjusted/ set off in their future energy bills. Therefore, this cannot be termed as an issue pertaining to tariff in *stricto* sense.

9.40 Further, the contention of the Respondent that the Petitioner is seeking to enforce obligations under the Haryana Development and Regulation of Urban Areas Act, 1975 and Haryana Development and Regulation of Urban Areas Rules, 1976 is completely misplaced. The Petitioner has prayed to this Hon'ble Commission to exercise its power under the Act and direct the Developer/Respondent to cure electrical infrastructure and recover development charges from consumers seeking new connections. The reference to Haryana Development and Regulation of Urban Areas Act, 1975 and Haryana Development and Regulation of Urban Areas Rules, 1976 does not mean that the case set up by the Petitioner in the instant petition does not fall under the purview of the Hon'ble Commission. The reference to various laws occupying the field with respect to the obligation of the developer is to substantiate, explain the import and significance of the regulations notified and orders passed by the Hon'ble Commission, which are not being complied with by the Respondent. As such, the present Petition is tenable in its present form and the legal position with respect to maintainability of

the issue involved in the present Petition already stands settled by this Hon'ble commission.

Even under Haryana Urban development Act and rules and subsequent orders issued by DTCP, the liability of creation of internal infrastructure is liability of Developer.

It has however emerged that the said condition is neither being complied with by any colonizer nor is the same enforced at the time of grant of part completion/completion certificate. In view of above, it is directed that before processing any case for grant of part completion/completion certificate, the compliance of said clause in its letter & spirit may be ensured.

The voltage level of internal electrical infratrucruure depends on the ultimate load. In the present case the as per the approved plan, the ultimate voltage level is 33 KV and for complete ultimate load of colony for which plan has not got been approved is 132 KV and keeping in view the approved plan of 33 KV, in adequacy calculations , the difference in cost of 132 KV & 33 KV has been taken .

Further in lines with the provisions of Urban Act, the developer has created partial infrastructure also which implies that the internal infrastructure is reuired to be carried out by the developer as per law

RE:PETITION IS LIABLE TO BE DISMISSED FOR MIS-JOINDER OF CAUSE OF ACTION AS DEPARTMENT OF TOWN AND COUNTRY PLANNING (DTCP) HAS NOT BEEN MADE PARTY TO THE PETITION –

9.41 The contention of the Respondent as regards DTCP being a necessary party to the instant petition is irrelevant and inconsequential. It is not the case of the Petitioner that there is any collusive act on the part of the Respondent and the DTCP that has led to non-completion of electrical infrastructure. The development of electrical infrastructure is the sole obligation of the developer and the same comes under the purview of this Hon'ble commission. The present petition is governing from Regulatory framework notified by this Hon'ble Commission and there is no relief sought qua DTCP in the petition. Even otherwise, the Hon'ble Commission has power to order impleadment of any party at any stage which they feel necessary for the effective adjudication of the issue involved. As such, the contention of the Respondent does not render the present Petition untenable.

In view of the foregoing submissions, the objections raised as regards the tenability of the petition are incorrect, illegal and devoid of merits and as such, are liable to be rejected.

Re: Para Wise Reply

In so far as parawise reply is concerned, the contents which have been stated to be matter of record, calls for no specific rebuttal. In reply to rest of the contents of the petition, the Respondent has merely reiterated the Preliminary Objections, which have been adequately dealt with hereinabove. As such, the submissions made above are reiterated as part to rebuttal to para wise reply of the Respondent. It is submitted that reliance placed by Respondent on Section 42 of the Act to claim that the obligation to create necessary infrastructure is upon the distribution licensee is based on incorrect expounding of position of law. The liability to cure inadequacy lies with Respondent and the legal position with respect to the same has been elaborated in the submissions made above. It is pertinent here to mention that in the Reply, the Respondent has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the correct of the amount of inadequacy computed by the Petitioner except evasive denials to the contents of the Petition. As such, in light of the foregoing submissions, the reliefs sought for in the instant petition are liable to allowed. The Respondent shall be directed to bear the cost of development of electrical infrastructure in a time bound manner and complete the balance electrical infrastructure and duly handover the same to the Petitioner. The reply to paragraphs of the 'Reply to Petition' is denied except what is a matter of record and contents of petition are reiterated for the sake of brevity.

In view of the submissions made above, it is respectfully prayed that this Hon'ble Commission may be pleased to allow the petition and pass appropriate directions as deemed fit and proper in the present facts and circumstances.

The present rejoinder, filed on behalf of UHBVN, responds to the reply by the Respondent. It denies all allegations and contests the maintainability of the petition, asserting jurisdiction of the Commission:

1. Denial of Allegations: UHBVN denies all allegations made by the Respondent unless specifically admitted. It contests the maintainability of the petition.
2. Jurisdiction of the Commission: UHBVN argues that the Hon'ble Commission has the power to regulate the development of electrical infrastructure under the Electricity Act, 2003. It highlights relevant statutory provisions empowering the Commission.
3. Precedents: UHBVN cites previous orders of the Commission where it ruled on similar issues, establishing its jurisdiction and the obligation of developers to ensure adequate infrastructure.
4. Invocation of "Removal of Difficulty" Clause: UHBVN asserts that it faces difficulty in implementing regulations due to inadequate infrastructure. It argues that the Commission has the power to issue directions and remove such difficulties.

5. Developer's Obligation: The petitioner emphasizes the obligation of developers to install adequate infrastructure, citing relevant laws and regulations.
6. Non-compliance of Directions: UHBVN contends that the Respondent's failure to comply with orders constitutes non-compliance under Section 142 of the Electricity Act, 2003.

Additional Details:

- Statutory Framework: UHBVN explains that the Electricity Act, 2003 empowers the Commission to regulate electrical infrastructure development.
- Regulatory Mechanisms: The Duty to Supply Regulations and Supply Code provide mechanisms for recovery of costs related to infrastructure development.
- Precedents: Previous orders of the Commission establish the obligation of developers to ensure adequate infrastructure.
- Invocation of "Removal of Difficulty" Clause: UHBVN asserts that lack of adequate infrastructure creates difficulty in fulfilling its obligations, justifying the invocation of the clause.
- Developer's Obligation: Developers are legally obligated to install adequate infrastructure, and failure to do so burdens consumers and the Distribution Licensee.
- Non-compliance of Directions: The Respondent's failure to comply with orders constitutes non-compliance under relevant sections of the Electricity Act, 2003.

RE: RELIEFS SOUGHT ARE NOT MAINTAINABLE IN ITS PRESENT FORM AS PETITIONER IS SEEKING TO ENFORCE OBLIGATIONS OF THE HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS ACT, 1975 AND RULES FRAMED THEREUNDER AND THE RECOVERY OF DEVELOPMENT CHARGES SHALL BE THROUGH FILING OF PETITION UNDER MYT REGULATIONS:

The Respondent contends that the relief sought regarding recovery of Development Charges from prospective consumers could impact retail supply tariffs, necessitating a Multi-Year Tariff Petition. However, the recovery of development charges is conditional and serves as a lien, not impacting retail tariffs directly. Moreover, the Hon'ble Commission has previously granted relief to distressed residents, allowing new connections on voluntary payment of development charges, demonstrating that this matter is not strictly about tariffs.

Furthermore, the Respondent's assertion that the Petitioner seeks to enforce obligations under specific acts and rules is misplaced. The petition seeks the Commission's intervention to ensure compliance with regulations not adhered to by the Respondent. The liability for internal infrastructure creation lies with the developer, as per relevant acts and regulations.

RE: PETITION IS LIABLE TO BE DISMISSED FOR MIS-JOINDER OF CAUSE OF ACTION AS DEPARTMENT OF TOWN AND COUNTRY PLANNING (DTCP) HAS NOT BEEN MADE PARTY TO THE PETITION:

The Respondent's argument regarding the necessity of DTCP's inclusion is deemed irrelevant. The petition concerns the developer's failure to fulfill obligations, not any collusive action involving DTCP. The Commission holds the authority to include any necessary party for effective adjudication, and the absence of relief sought against DTCP renders this objection invalid.

The objections raised by the Respondent lack merit and are therefore liable to be rejected. The petition stands tenable under the regulatory framework established by the Commission, and appropriate directions are sought to ensure compliance and resolution of the issues at hand.

10. The case was heard on 20/03/2024, Ms. Sonia Madan, Advocate appearing for the petitioner submitted that rejoinder has been filed. The Counsel re-iterated the contents of the petition and asserted that the objections raised by the respondent in its reply regarding maintainability of the petition, Jurisdiction of the Commission, difficulty in implementing the regulations, Power to remove difficulty and recovery of development charges have already been addressed in the previous orders by the commission and all the petitions are maintainable, fall in the jurisdiction of the Commission and the Commission has all the powers to implement regulations and to remove difficulties, if any.

The counsel for the respondent contested that the Commission has adjudicatory powers only for the cases between distribution licensee and generator. The respondent is a colonizer and there is no provisions with regard to colonizers in the Electricity act. The counsel cited various judgements of Hon'ble Supreme Court and asserted that the agreement / License has been issued by DTCP and any dispute in this regard can only be addressed by their regulator. However, the counsel failed to produce documentary evidence before the Commission in support of his contentions. The Counsel requested for one weeks' time to submit compendium of judgments/citations.

After hearing the contentions of both the parties, the Commission observes that the documentary evidences of quoted citations are required for reference of the Commission and even opposite counsel is not in a position to counter in absence of the same.

The commission adjourns the matter and directs the respondent-developer to submit requisite documents within a week with an advance copy to the petitioner.

11. The case was heard on 15/05/2024, Ms. Sonia Madan, Advocate appearing for the petitioner submitted that the respondent's

contentions regarding maintainability of the petition have already been settled. The counsel for the respondent submitted that the petition had been filed long back with old load norms. As per latest load norms the inadequacy amount is required to be re-assessed and be intimated to the respondent. After hearing parties, the Commission directed the parties, to hold a meeting in the 1st week of June' 24 to re-assess the inadequacy amount for reconciliation and mutual settlement.

12. The case was heard on 10/07/2024, Ms. Sonia Madan, Advocate appearing for the petitioner submitted that as per direction of the Commission, the meeting could not be held in the month of June 2024 as the concerned officials of respondents were not available. Now the meeting is scheduled on 16/07/2024. Ms. Madan and counsel for the respondent jointly requested for short adjournment so that the minutes of meeting could be filed before next date of hearing. Acceding to request of the parties, the Commission adjourns the matter.
13. The case was heard on 08/08/2024, Ms. Sonia Madan, counsel for the petitioner submitted that the conciliation meeting with the respondent was held and the amount of inadequacy is required to be revised in wake of the latest revision of the load norms. The counsel requested for 3 weeks' time for conveying the revised inadequacy amount to respondent No.1, after due approval from management. Acceding to the request of the petitioner, the Commission adjourns the matter and directs the petitioner to file revised amount of inadequacy within 3 weeks with an advance copy to respondent No.1 and the respondent No.1 to submit their response if any, within two week with an advance copy to the petitioner.
14. The case was heard on 27/09/2024, Ms. Sonia Madan, counsel for the petitioner submitted that the revised inadequacy amount has been worked out as per latest load norms and she submitted a copy of the same in the court. She further submitted that an amount of Rs. 65 Lakh is also pending against the respondent towards MDI penalty. Sh. Akhil Shandilya counsel for the respondent developer requested to grant time for filing response to the revised inadequacy amount intimated by the petitioner. The counsel further submitted that he has no instructions from the client on outstanding MDI penalty amount. Acceding to the request of the respondent, the Commission adjourned the matter and directed the respondent to submit their response, within two weeks with an advance copy to the petitioner. The petitioner may also file its response, if any, within a week thereafter

15. Revision of Inadequacy amount on 27/09/2024

As per revised load norms, the Inadequacy amount has been reduced from Rs. 35.16 Cr. to Rs.19.36 Cr. An amount of Rs. 65 Lakh is also pending against the respondent towards MDI penalty. Thus total recoverable amount is Rs. 20.01Cr.

16. The case was heard on 06/11/2024, none appeared on behalf of respondents. Sh. Akhil Shandilya counsel for the respondent developer vide email dated 04/11/2024 requested for adjournment and to schedule the proceedings at a convenient date after 2 weeks. Acceding to the request of the respondent, the Commission adjourned the matter and directed the respondent to submit their response, within two weeks with an advance copy to the petitioner. The petitioner may also file its response, if any, within a week thereafter.
17. The case was heard on 03/12/2024, as scheduled, in the court room of the Commission. Ms. Sonia Madan submitted a copy of the written arguments and re-iterated contents of the same. She further submitted that the maintainability aspect of the petition has already been addressed in various orders of the Commission. Sh. Akhil Shandilya counsel for the respondent requested for some time to file written submissions. The Commission observed that ample opportunity has already been provided to parties to submit their averments. The commission reserved the order and allowed the respondent to submit their written submissions on or before 10/12/2024.

18. Written submissions of petitioner dated 03/12/2024

18.1 HERC/PRO 34 of 2023

Sr. No.	Particulars	Date/ Details
1.	Project Involved	Ansal Sushant City, Panipat Sector 19, Panipat
2.	Area of Project	2817 Plots in 346.0025 acres
3.	Electrification Plan approved on	21.03.2006
4.	Ultimate Load	18.94 MW/ 21.042 MVA
5.	Inadequacy Amount	Rs. 19.36 crores
6.	Land for Sub-station	1.25 Acres of Land has been transferred by developer through Gift Deed.
7.	New load norms circulated vide Sales Circular No. U-25/2024 on	26.07.2024

PRELIMINARY ISSUE raised by the Respondent i.e. Ansal Properties and Infrastructure Ltd. — The Respondent has raised an issue of maintainability of the instant Petition and has contended that it is beyond the jurisdiction of the Commission to take cognizance of the default of the Developer to install electrical Infrastructure in terms of

approved Electrification Plan and issue any directions consequent thereto.

ARGUMENTS ON MAINTAINABILITY OF PETITION -

1. At the outset, it is submitted that the issue as regards the subject matter of the instant Petition being within the jurisdiction of the Hon'ble Commission stands settled in the various Orders passed by this Hon'ble Commission, the recent being Order dated 08.08.2024 passed in Petition No. 47 of 2022 and Order dated 08.08.2024 passed in Petition No. 51 of 2022 (Enclosure J-1). The Respondent Developer in these cases developed projects within DHBVN's license area, but failed to install adequate electrical infrastructure to cater to the load as per the applicable load norms. The Respondent objected to the petition on various counts. It was primarily contended that the petition does not fall within the jurisdiction of the Commission. The Commission categorically framed an issue with respect to the maintainability and jurisdiction of the Petition and held following -
 - a) As per Regulation 8 and 9 of HERC Duty to Supply Regulations, 2016, the Commission has the jurisdiction to issue directions as well as to remove difficulties for the implementation of the Regulations. Lack of adequate infrastructure on account of the Respondent is consonant with the difficulty faced by them in performing its duty to supply electricity to the consumers under the 44 of the Electricity Act and the Regulations. The powers to remove difficulty has been rightly pleaded by DHBVN, and the Commission has the jurisdiction to remove such difficulty.
 - b) Commission has jurisdiction to adjudicate on the issue under Section 86 (1) (i) and (k) of Electricity Act, 2003 which stipulates the function of a State Ld. Commission to enforce standards with respect to quality, continuity and reliability of service by licensee and to discharge functions as it may be assigned to it under the Act.
 - c) Even in terms of proviso to Regulation 6.1 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"), if at the time of energization of system, it is noted that the concerned developer has not executed the complete work as per electrification plan approved by the Licensee, the Developer/Respondent shall also be required to furnish bank guarantee for the balance incomplete work in terms of Regulation 4.12 of Duty to Supply Regulations. Regulation 10 and 11 of the Single Point Regulations also stipulates the power of the commission to issue direction and remove difficulties for its implementation. Commission is empowered to issue appropriate orders/ directions to ensure compliance of the extant regulations.
 - d) Power to adjudicate the present issue also arises from a bare reading of Regulation 4.1 of Duty to Supply Regulations.
 - e) Commission has jurisdiction to adjudicate on the present issue under section 86 (1) (i) and (k) of Electricity Act, 2003 ("Act") which stipulates the function of a State Commission to enforce standards with respect

- to quality, continuity and reliability of service by licensee and to discharge functions as it may be assigned to it under this Act.
- f) Time and again, cognizance of the issue of builder inadequacy has been taken by the Commission by rightly exercising its powers under the Act as well as the Regulations in force. Reference made to the Order dated 20.02.2015 passed in (i) HERC PRO No. 21 and 23 of 2013 titled as Ansal Buildwell Vs. DHBVNL & ORS, and (ii) order dated 09.08.2021 passed in HERC PRO NO, 48 of 2020.
 - g) The Commission has already settled the principle that it is the bounden obligation of the builders and developers to cure the inadequacy of electrical infrastructure in their projects.
 - h) The Commission in its order dated 09.08.2021 passed in HERC PRO NO. 48 of 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 electrical infrastructure for the licensed area before release of electrical connection for which compliance is required to be made by Developer.
 - i) In terms of the Regulations and Supply Code, 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.
- II. PSERC as well with respect to similar issue, in the Order dated 27.05.2023 in PSPCL v CREDAI and Ors. (Petition No. 07 of 2021) (Enclosure J-2) held that as per the powers conferred under Regulations 45, 46 & 47 of the Supply code, 2014 read with Regulations 68, 69, 70 & 71 of PSERC (Conduct of Business) Regulations, 2005 and by relaxing the relevant provisions of Regulation 6.7 of the Supply Code, 2014, as amended from time to time, the Commission can take cognizance of the hardships being faced by the residents of colonies on account of the defaults of delinquent developers and consequently issued several directions to regulate the release of electric connections. It was categorically held that under Section 50 of the Act, State Commission is authorized to notify Electric Supply Code and use of expressions such as recovery of charges, disconnection/reconnection etc in section 50 of the Act indicate that scope of regulatory powers of the State Commission is wide enough to govern all matters relating to the supply of electricity in the premises of an applicant. In this case, a petition was filed by PSPCL under Regulation 6.7 & 47 of the Supply Code, 2014 read with Regulation 69, 70, 71 & 72 of Chapter XII of the PSERC (Conduct of Business) Regulations, 2005 for release of electricity connections in those licensed colonies where the developers sold plots/flats without obtaining NOC from PSPCL or where the developers after obtaining NOC, had abandoned the project without installing the Local Distribution system (LD system). PSPCL highlighted several issues being faced due to the defaults on the part of the delinquent developers, as a result of which electricity connections were not being released in colonies where the LD system was not laid by the developers, or was partially laid. Commission examined the regulatory regime governing release of connections to the occupier of premises.

Commission referred to the judgement passed by the Hon'ble Supreme Court in Civil Appeal No.21092110 of 2004, wherein it was held that the duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity. Commission held -

- a. As per PSERC (Electricity Supply Code and Related Matters) Regulations, 2007 framed by the Ld. Commission, the LD system is required to be erected by the developer and electric connections to the residents can be released only after completion of the LD system and its inspection by CEI. There was no provision of connecting an incomplete LD system with the distribution system.
- b. The release of connection to the applicants by the distribution licensee in his area of distribution is governed by the terms and conditions specified in the Supply Code Regulations. The release of connections in the residential colonies developed under the bye-laws and rules of the State Government are governed by the provisions of Conditions of Supply and the Supply Code, 2014, as amended from time to time.
- c. As per this regulation, the LD system is required to be erected by the developer and electric connections to the residents can be released by the distribution licensee only after completion of the LD system and its inspection by CEI. In case a developer intends to avail connectivity to a partially developed LD system then BG, as specified in Supply Code, shall be furnished by the developer.
- d. After considering all the legal aspects and discussing the roles and responsibilities of each stakeholder, the Commission, as per the powers conferred under Regulations 45, 46 & 47 of the Supply Code, 2014 read with Regulations 68, 69, 70 & 71 of PSERC (Conduct of Business) Regulations, 2005 and by relaxing the relevant provisions of Regulation 6.7 of the Supply Code, 2014 as amended from time to time, Commission issued several directions to regulate the release of electric connections in the colonies declared as 'abandoned'.

III. Powers of the Commission under Section 86 of the Electricity Act, 2003 ('Act')

- a) Section 86 of the Electricity Act, 2003 empowers Hon'ble Commission to exercise adjudicatory, regulatory as well administrative functions so as to give effect to the intent and purpose enshrined under Electricity Act, 2003 as a Regulatory Body.
- b) Section 86(1)(i) and (k) empowers to specify or enforce standards with respect to quality, continuity and reliability of service by licensees and to discharge functions as it may be assigned to it under this Act.
- c) 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".
- d) Under Section 46, a distribution licensee is empowered to charge from any person who seeks supply of electricity any expenses reasonably

incurred in providing any electric line or electric plant used for the purpose of giving electricity. Section 47 empowers the distribution licensee to seek a reasonable security from any person who requires supply under Section

43. Under Section 481 a distribution licensee may require the applicant, who requires a supply of electricity in pursuance of Section 43, to accept any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under Section 53. Further, Section 50 empowers the State Electricity Regulatory Commission to specify an Electricity Supply Code providing for recovery of electricity charges, amongst other things. 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 HERC under Section 46 of the 2003 Act. A conjoint reading of the foregoing legislative provisions evinces that the cost of development of distribution electrical infrastructure and supply has to be regularized and the recovery of cost thereof has to be made from the beneficiaries. Such cost has to be recovered in a manner that no consumer is incentivized at the cost of others.

- e) The power of the licensee to ensure quality, continuity and reliability of service is governed by various regulations notified by the Commission.
- f) The Electrification Scheme/Plan is prepared as per the regulatory framework notified by Commission and is a document governed by the jurisdiction of Commission.
- g) As per the electrification plan, the total load is approved for the project and the same was to be fed from the electrical infrastructure to be constructed by the builder, for which conditions are also stipulated in the order in consonance with the regulatory framework. The conditions of electrification plan are an obligation of the developer and any defaults in fulfilment of such obligations affects the quality, continuity and reliability of power supply, which is to be regulated by Commission.
- h) Regulation 4.12 read with Regulation 3,10 of the Duty to Supply Regulations, the liability to bear cost of distribution system etc. shall be rightfully borne by the builder, who develops a project and assures to provide all essential amenities to the consumers of such project.
- i) Developer is bound to bear the cost of electrical infrastructure to be installed as per electrification plan sanctioned under the Supply Code. Regulation 3.10 and 4.12 of the Duty to Supply Regulations obligates Developer to lay down electrical infrastructure.
- j) Regulation 4.2.3 read with Regulation 4.2.4 of the Supply Code also 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 shall have to be borne by the aforesaid developers/builders.

k) It emanates from the statutory provisions as well as the regulations framed thereunder that once a builder/developer has chosen to install electricity infrastructure on its own, it is the bounden duty of the developer in terms of the extant regulations to ensure that such infrastructure is adequately installed, and the Distribution Licensee is entitled to recover appropriate expenses directly from the Developer for all electrical works and supply of electricity. Considering the basic and overriding purpose of Electricity Act, 2003 being ensuring generation of electricity and efficient equitable distribution thereof with the interest of the consumers in mind, the Commission has full jurisdiction to regulate issues concerning distribution of electricity and other necessary concomitance thereto.

IV. In UPPCL v NTPC (2009) 6 SCC 235 (Enclosure J-3), Hon'ble Supreme Court held that 'a regulatory Commission not only makes Regulations but in view of its extensive powers BUT ALSO in-charge of implementation thereof. For the CERC exercising similar powers as is enshrined for SERC's, it was held that The Central Commission in terms of the Act as also the Regulations framed thereunder exercise diverse powers. It exercises legislative power; power of enforcement of the Regulations as also the adjudicatory power. Each of its functions although are separate and distinct but may be overlapping. The power of the Central Commission is extensive.... the regulatory provisions are required to be applied having regard to the nature, textual context and situational context of each statute and case concerned.

V. In PTC India Ltd. v CERC (2010) 4 Supreme Court Cases 603 (Enclosure J-4), with respect to 'power of commission to regulate', it was held that "To regulate is an exercise which is different from making of regulations. However; making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(f)." It was further held as under —

"On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. "

"Applying the abovementioned tests to the scheme of the 2003 Act, we find that under the Act, the Central Commission is a decision-making as well as regulation making authority, simultaneously. Section 79 delineates the functions of the Central Commission broadly into two categories —mandatory functions and advisory functions. Tariff regulation, licensing (including inter-State trading licensing), adjudication upon disputes involving generating companies or transmission licensees fall under the head "mandatory functions" whereas advising the Central

Government on formulation of National Electricity Policy and tariff policy would fall under the head "advisory functions". In this sense, the Central Commission is the decision-making authority. Such decision-making under Section 79(1) is not dependent upon making of regulations under Section 178 by the Central Commission. Therefore, functions of the Central Commission enumerated in Section 79 are separate and distinct from functions of the Central Commission under Section 178. The former are administrative/adjudicatory functions whereas the latter are legislative.

As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act " (Emphasis Supplied)

VI. In *M/S Impact Projects Private Limited v PSPCL and Ors.*, CWP 23009 of 2019, Order dated 07.04.2021 (Enclosure J-5), the Hon'ble HC took note of the fact that the Developer has to comply with the regulations in completing the electrical infrastructure and any default in laying of electrical infrastructure is a default of the regulation of the Commission. It was further taken note of that the distribution licensee would be adversely affected in the case of the default of the developer. The relevant extract of the Order reads as under -

"4.8 It may be noted here that it is not disputed by the petitioners have failed to completely develop the local distribution networks in most of the projects as the occupancy is low. The petitioners want to hand over the incomplete projects to the distribution licensee and walk away. In such circumstances, the distribution licensee is entitled to insist upon the petitioners to comply with the necessary requirements, so that the infrastructure for the expected demand of electricity is in place before the petitioners hand over the management of the electricity distribution to the PSPCL No doubt, individual electricity connections have been issued to the occupiers/buyers/individua/ owners of the residential premises, however, that would not absolve the petitioners from fulfilling the requirements of the supply code, 2014.

4.9 This matter can be examined from yet another perspective. If in the absence of complete infrastructure, the distribution licensee is forced to take over the incomplete local electricity distribution network, the consumers are likely to suffer. The developer after handing over the complete management would walk away from the project and the distribution licensee would be then either be unjustifiably required to invest in the infrastructure which is the responsibility of the developer as per Supply Code, 2014 or the occupier will get proper supply of the electricity." (Emphasis Supplied)

19. Commission's Analysis and Order:

The Commission vide its interim order dated 11/10/2023 granted Interim Relief to distressed residents by allowing Release of New Electricity Connections and further analysed the case as under:

1. The Petitioner submitted Written Arguments in the matter during the hearing dated 03.12.2024, which was taken on record. In the said hearing, the Ld. Counsel for the Respondent no. 1 requested for some time to file their Written Submissions. The Respondent no. 1 was allowed for filing the same upto 10.12.2024. However, no written submission was filed by the Respondent. The Commission has considered the submissions made by the Petitioner in the Petition/Rejoinder/Affidavits, submission made in the Reply filed by the Respondent no. 1 and the pleadings made by both the parties and has also critically examined the entire material/information placed on record by both the parties.
2. Briefly stated, the Petitioner has set out a case that the Respondent Developer has defaulted in fulfilling their obligation to create adequate electrical infrastructure as per the approved Electrification Plan to meet the ultimate load of the project thereby adversely affecting the allottees of the Project and also the interest of the larger public, as the deficient electrical infrastructure affects the existing distribution/transmission system and its planning thereby adversely impacting the consumers at large.
3. The Respondent no. 1 has objected to the maintainability of the petition and has raised following broad issues for consideration –
 - a) The subject matter of present petition is outside the jurisdiction of the Commission;
 - b) Untenability under Section 142 and 146 of the Electricity Act, 2003 as there is no wilful non-compliance of directions; and
 - c) Inadequacy sought to be recovered is not tenable and recovery of development charges shall be through filing of petition under MYT Regulations; and
 - d) Mis-joinder of cause of action as department of town and country planning (DTCP) has not been made party to the petition.
4. With regards to the objection raised by Respondent no. 1 qua the jurisdiction, the Commission has already adjudicated the similar objection in similar cases concerning non-development of adequate electrical infrastructure by the developers in various matters i.e. Order dated 08.08.2024 in Petition No. 51 of 2022; Order dated 07.05.2024 in Petition No. 44 of 2022 and Order dated 29.02.2024 in Petition No. 41 of 2022. In the instant Petition as well, the nature of objections is similar *qua* the jurisdiction of the Commission. However, the findings of the Commission as regards the jurisdiction are briefly summarized hereunder after consideration of all the contentions raised by both parties –
 - a) Section 86 of the Electricity Act, 2003 lists down powers of the Commission which entails adjudicatory, regulatory as well administrative functions to give effect to the intent and purpose

enshrined under Electricity Act, 2003 as a State Electricity Regulatory Authority. Section 86(1)(i) and (k) of the Electricity Act, 2003 empowers Commission to specify or enforce standards with respect to quality, continuity and reliability of service by licensees and to discharge functions as it may be assigned to it under this Act. Construction of adequate electrical infrastructure is essential to ensure reliable, continuous and quality electric supply to the residents of the State.

- b) The Regulations notified by this Commission obligates the Developer to get the Electrification Plan approved for development of electrical infrastructure, that has to be built commensurate to the ultimate load of the project. The Electrification Plan is prepared for the projects licensed by the Department of Town and Country Planning, Haryana. The obligation for cost of laying of electrical infrastructure is that of the Developer, which forms a component of the total project cost. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the Developer/Builder emanating from the regulations of the Commission which has a statutory force. Completion of such electrical infrastructure is essential for the licensee to provide reliable, continuous and quality electric supply to the residents of the State.
- c) Bilateral Agreement between Director General, Town and Country Planning, Haryana, (DTCP) and Developer also stipulates that it shall be the responsibility of the Developer for installing adequate electrical infrastructure in the areas for which they have been granted permission for development.
- d) The power of the licensee to ensure quality, continuity and reliability of service is also governed by various regulations notified by Commission. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the developer/builder emanating from various regulations which has a statutory force.
- e) Section 43 of the Electricity Act, 2003 casts a duty on the distribution licensee to supply electricity to the owner or occupier's premises. 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*".
- f) Section 46 of the Electricity Act, 2003 empowers Commission 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, that make part of the adequate electrical infrastructure that is required to achieve the ultimate load of a particular sanctioned area.
- g) 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.

- h) This Commission has notified Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 (*Electricity Supply Code, 2014*) as well as 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 (*Duty to Supply Electricity Regulations, 2016*) with amendments issued from time to time. These Regulations empowers the Commission to issue directions and orders as considered appropriate for implementation of these Regulations and to remove any difficulty which may arise in giving effect to the provisions of the Regulations.
- i) Regulation 4.6 of Duty to Supply Electricity Regulations, 2016 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.
- j) Regulation 4.2.3 of Electricity Supply Code, 2014 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 Commission under Section 46 of the Electricity Act, 2013.
- k) The relevant regulations notified by the Commission, which obligates Developer to create Electrical Infrastructure are as under –

Haryana Electricity Regulatory Commission Duty to Supply Electricity on Request and Power to Recover Expenditure and Power to Require Security Regulations 2016 (1st Amendment) Regulation, 2020.

4.12.2 Special Provisions in case of a Developer opting under Regulation 3.10 for self-execution of the work for Electrical Infrastructure within its Development Area.

(a) *In case a Developer opts to carry out work for installation of Electrical Infrastructure in its Development Area on its own, it shall get the same carried out through a Licensed Electrical Contractor as per Regulation 3.10 of Duty to Supply Regulations, 2016 as amended from time to time.*

(b) *The Developer before commencement of work for installation of Electrical Infrastructure in his area of development shall obtain approval of electrification plan along with an execution plan and the estimate of cost of the work of electrical infrastructure for each phase on the basis of Regulation 4.8.4 for execution of the work as per the said plan and pay supervision charges to the licensee in accordance with Regulation 3.10 of the Regulations.*

(c) *The aforesaid execution plan for installation of complete Electrical Infrastructure by the Developer may be executed in maximum 4 (four) phases spanning over a period of 5 (five) years or such executed in*

other extended period as may be deemed fit by the Distribution Licensee. Provided, in case of development of large area (50 Acre or above) the phases for execution may be six spanning over period of 10 years including extension granted by the appropriate authority. Provided that, the land which constitutes a phase declared by the Developer shall be contiguous and one single piece of land.

(d) Distribution Licensee, within 30 (thirty) days from the date of approval of electrification plan, **shall issue a demand notice requiring the Developer to submit a BG within 30 (thirty) days equivalent to the estimated cost of the work** for installation of Electrical Infrastructure necessary to meet the demand of first phase as per approved electrification plan.

(e) The Developer, before commencement of the work for installation of Electrical Infrastructure in each subsequent phase(s), shall apply to the Distribution Licensee for assessment of estimated cost of the work to be done in such subsequent phase as per Regulation 4.8.4. The Distribution Licensee, within 30 (thirty) days of such application, shall issue a demand notice requiring the Developer to submit a BG within 30 (thirty) days equivalent to the estimated cost of the work for installation of the Electrical Infrastructure necessary to meet the demand of such subsequent phase of the aforesaid execution plan.

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.

“6.1 Employers' Colonies, Group Housing Societies, Developers' Commercial Complexes/ shopping malls/Industrial Estate/IT Parks/ SEZ covered under Regulation 3.1, Regulation 4.1, Regulation 5.1 and Regulation 5.2 respectively.

(a) For supply of electricity at Single Point to colonies falling under the purview of Regulation 3.1, a GHS as per Regulation 4.1 consumer covered under appropriate Govt/ deemed licensee as per regulation 5.1 and Commercial Complex/ Industrial Estates/ IT park/SEZ covered under Regulation 5.2, the Employer/ GHS/Developer/ Users Association shall be obliged to seek connection for supply of electricity at a single point at 11 kV or higher voltage under these Regulations by submitting an application in the prescribed form with requisite charges to the Distribution Licensee giving complete details of the load of all residential units, common services and other non-domestic/ Industrial loads if any. The Distribution Licensee will supply electricity at a Single Point at 11 KV or higher voltage subject to technical feasibility.

Provided that in case of Developer/Users Association covered under Regulation 4.1 or 5.2, the distribution licensee shall ensure, before release of Single Point Supply connection, that the Developer has completed the installation of entire

electrical infrastructure within its complex as per the approved electrification Plan.

*Provided, 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 incompleting work** as per regulation 4.12 of HERC Duty to Supply Electricity on request, Power to recover expenditure incurred in providing supply and Power to require Security Regulations, 2016 as amended from time to time. 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.*

*Provided further, that **on completion of the electrical infrastructure by the Developer, the operation and maintenance of these assets shall be handed over to the RWA/Users Association** and the Single Point Supply connection if any taken by the Developer shall be got transferred/changed in the name of RWA/Users Association along with all the securities deposited with the distribution licensee and other guarantee/warranty of the electrical equipments installed.*

b) The Employer/GHS/ Developer/ Appropriate Government/Users Association will install, operate & maintain all infrastructure, including substations/transformers, required for distribution of electricity within the premises of the Employer/ GHS/Developer/Users Association at his own cost.”
(Emphasis Supplied)

- l) The foregoing regulations clearly obligates the Respondent no. 1-developer to execute the work of electrical infrastructure in their project area and to ensure that, it was incumbent upon them to have got the revised Electrification Plan approved, submit Bank Guarantee and take steps for completion of work as per approved Plan. A conjoint reading of the foregoing provisions evinces that the cost of development of distribution electrical infrastructure and supply has to be regularized and the recovery of cost thereof has to be made from the beneficiaries. Such cost has to be recovered in a manner that no consumer is incentivized at the cost of others.
- m) If the infrastructure required as per the peak load requirement of an area is inadequate and UHBVN releases new connections and provides electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose. A conjoint reading of the provisions of the Electricity Act 2003 and regulations framed thereunder, vest the power with this Commission to regulate development of electrical infrastructure in the State to ensure a robust and reliable electrical supply to the consumers of the State.

- n) Hon'ble Supreme Court in **UPPCL v NTPC (2009) 6 SCC 235** held "A regulatory Commission not only makes Regulations but in view of its extensive powers BUT ALSO in-charge of implementation thereof." The Commission's power/jurisdiction to issue necessary directions for recovery of costs, which is the obligation of the Developer, as sanctioned by the Regulations, is enshrined in the statutory framework.
- o) Due to lack of adequate electrical infrastructure, there has been a serious prejudice caused to the Petitioner as well as buyers of the premises in Projects. Commission had duly taken cognizance of this difficulty which passing interim orders seeking time gap arrangement for release of electric connections by augmentation of infrastructure at the cost of the residents to ease the hardship caused to the consumers.
- p) In the event the cost for development of adequate Electrical Infrastructure is not borne by the Developer, the same shall have to be passed through the Annual Revenue Requirement of the Petitioner Nigam thereby burdening the consumers at large without providing any direct benefit to them, which is against the Electricity Act, 2003. It is therefore, the function of this Commission to ensure and check the violation of such regulations and provisions of Act that disrupts quality, reliability as well as continuity of supply of electricity in the State. The Commission has thus, has the jurisdiction to adjudicate on the present issue under section 86 (1) (i) and (k) of Electricity Act, 2003.
- q) Ld. Counsel for the Petitioner has referred to following judgments, which are relevant to the issue in hand, which are as under -
- i. **PTC India Ltd. v CERC (2010) 4 Supreme Court Cases 603**, with respect to 'power of commission to regulate', the Hon'ble Apex Court held that "To regulate is an exercise which is different from making of regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/ measures under Section 79(1)." It was further held as under -

"On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law."

"Applying the abovementioned tests to the scheme of the 2003 Act, we find that under the Act, the Central Commission is a decision-making as well as regulation making authority, simultaneously. Section 79 delineates the functions of the Central Commission broadly into two categories —mandatory functions and advisory functions. Tariff regulation, licensing (including inter-State trading licensing), adjudication upon disputes involving generating

companies or transmission licensees fall under the head “mandatory functions” whereas advising the Central Government on formulation of National Electricity Policy and tariff policy would fall under the head “advisory functions”. In this sense, the Central Commission is the decision-making authority. Such decision-making under Section 79(1) is not dependent upon making of regulations under Section 178 by the Central Commission. Therefore, functions of the Central Commission enumerated in Section 79 are separate and distinct from functions of the Central Commission under Section 178. The former are administrative/adjudicatory functions whereas the latter are legislative.

As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act....”

- ii. **M/S Impact Projects Private Limited v PSPCL and Ors., CWP 23009 of 2019, Order dated 07.04.2021**, the Hon’ble Punjab and Haryana High Court took note of the fact that the Developer has to comply with the regulations in completing the electrical infrastructure and any default in laying of electrical infrastructure is a default of the regulation of the Commission. It was further taken note of that the distribution licensee would be adversely affected in the case of the default of the developer. It was held as under -
- “4.8 It may be noted here that it is not disputed by the petitioners have failed to completely develop the local distribution networks in most of the projects as the occupancy is low. **The petitioners want to hand over the incomplete projects to the distribution licensee and walk away. In such circumstances, the distribution licensee is entitled to insist upon the petitioners to comply with the necessary requirements, so that the infrastructure for the expected demand of electricity is in place before the petitioners hand over the management of the electricity distribution to the PSPCL.** No doubt, individual electricity connections have been issued to the occupiers/buyers/individual owners of the residential premises, however, that would not absolve the petitioners from fulfilling the requirements of the supply code, 2014.
- 4.9 This matter can be examined from yet another perspective. **If in the absence of complete infrastructure, the distribution licensee is forced to take over the incomplete local electricity distribution network, the consumers are likely to suffer. The developer after handing over the complete management would walk away from the project and the distribution licensee would be then either be unjustifiably required to invest in the infrastructure which is the responsibility of the developer as**

per Supply Code, 2014 or the occupier will get proper supply of the electricity.” (Emphasis Supplied)

- r) It is well settled that this Commission has been entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. The overriding purpose of Electricity Act, 2003 being ensuring generation of electricity and efficient equitable distribution thereof with the interest of the consumers in mind, the Commission has jurisdiction to regulate issues concerning distribution of electricity in the State and other necessary concomitance thereto.
- s) The Petitioner has also invoked power to remove difficulty under the Regulations. It is the difficulty of the Petitioner that it cannot in law take over the deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity. Only after the completion of all works and the grant of completion certificate by DTCP, does the obligation of the Distribution Licensee arise under the Duty to Supply Regulations to take over the electrical infrastructure in that area. In case of inadequate infrastructure, the system cannot be taken over by Licensee. Therefore, the powers to remove difficulty has been rightly pleaded by the Petitioner iterating the difficulty in its obligation to supply electricity to the consumers at large on account of inadequate infrastructure as well the Duty to Supply Electricity, Regulations 2016. The Commission has the prerogative and jurisdiction to exercise this power to remove such difficulty. The Hon'ble Supreme Court in *Madera Upendra Sinani vs. Union of India* (1975) 3 SCC 765 recognized the principle as under:

“40, Again, the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not difficulty arising aliunde, or an extraneous difficulty. Further, the central government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further”

- t) Even in the case of *Ratnagiri Gas Power Private Limited vs Central Electricity Regulatory Commission* (2011) ELR (APTEL) 532, the Hon'ble APTEL held that:

“10.3 In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. Thus, the exercising power to remove difficulties does not arise in the present case.

10.7. The above regulations and the decision to give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.”

- u) In terms of the settled principle of law relating to “removal of difficulty” clauses and their invocation as stated above, the Petitioner has thoroughly furnished as to how the lack of adequate infrastructure on account of the Respondent is consonant with the difficulty faced by the Petitioner in performing its duty to supply electricity to the consumers under the Electricity Act, 2003 and the Regulations referred above. The scheme of the Electricity Act, 2003 and the provisions of the regulations has to be read harmoniously to establish the need for removing difficulty caused by Respondent in giving effect to the Regulations.
 - v) The Commission has time and again taken cognizance of the issue of builder inadequacy by rightly exercising its powers under the Act as well as the Regulations in force. In view of foregoing, the Commission holds that it has jurisdiction to take cognizance of the default of Respondent no. 1 in creation of adequate electrical infrastructure for the project, to issue directions to ensure it is created to meet the ultimate load of the society, which is necessary to ensure the effective supply of electricity to the allottee’s, who have borne the cost of the same. Hence, the issue of jurisdiction as agitated by the Respondent no. 1 has not merit.
5. As regards objection of the Respondent no. 1 regarding tenability of petition under Section 142 and 146 of the Electricity Act, 2003 is concerned, Sections 142 and 146 encompass powers of the Commission to penalize any person who contravenes any provisions of the Electricity Act and regulations framed thereunder. The object and purport of the aforesaid provisions are to ensure compliance of the provisions of Act and the Commission’s Regulations. Respondent no. 1 has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the amount of inadequacy computed by the Petitioner. The Respondent no. 1 has failed to make any averments or reply against its liability to bear the cost of electrical infrastructure for the project. The default on the part of the Respondent essentially stands admitted. The Respondent no. 1 has failed to explain as to how the non-creation of electrical infrastructure is not wilful. Due to this deliberate non-compliance on the part of the Respondent no. 1, the inadequacy persists for years causing undue harassment to the consumers/residents in their Projects. This non-compliance calls for an action within the ambit of Section 142 of the Electricity Act which empowers the Commission to penalize for contraventions of “any of its order and regulation”.
6. As regards the inadequacy, the Commission has already held that it is the bounden obligation of the builders/ developers to build adequate electrification infrastructure as per plan and cure the inadequacy of electrical infrastructure in their projects. The position of law elucidated above establish 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. The Respondent no. 1 is obligated to erect the electrical infrastructure in compliance with the load norms that exists on date.

7. The contention of the Respondent no. 1 to the effect that the relief sought by the Petitioner regarding recovery of Charges from the consumers will have an impact on retail supply tariff which ought to be conducted through public hearing in Multi-Year Tariff Petition is not acceptable. The recovery of charges was conditional and the same has to be paid back to consumers on recovery from Respondent no. 1. These charges are not an income for the Petitioner and shall have no bearing on the retail supply tariff. This Commission had exercised its inherent powers for granting immediate interim relief to distressed residents. The said charges voluntarily paid by the residents shall be adjusted/ set off in their energy bills as and when the inadequacy is cured by the developer.
8. The contention of the Respondent inclusion of DTCP being a necessary party to the instant petition is irrelevant. The development of electrical infrastructure is the obligation of the developer and the same comes under the purview of this Hon'ble commission since the present petition is governing from Regulatory framework notified by this Commission and there is no relief sought qua DTCP in the petition. As such, the contention of the Respondent does not render the present Petition untenable.
9. The liability for failure of the Developer to build electrical infrastructure in terms of its obligations to ensure robust and reliable electrical supply cannot be fastened to the larger consumers. Commission observes that the Respondent Developer has failed to cure the inadequacy of electrical infrastructure as pointed out by the petitioner, which is required to be cured by the Respondent Developer as per provisions stipulated in the regulations, due to which the residents of these projects are left in lurch. Having perused the details of inadequacies as furnished by the Petitioner vide its pleadings, it is noted that, inadequacy of Rs.19.36 Cr remains in the Project developed by the Respondent no. 1 and the Respondent no. 1 is liable to cure the same in a time bound manner.
10. In view of the foregoing facts and position of law, since the Respondent no. 1 has failed to cure inadequacies, the petition is allowed with following directions:
 - a) The inadequacies amounting to Rs.19.36 Cr shall be cured by the Respondent within 6 months;
 - b) The monthly progress report of the work on curing of inadequacies shall be submitted by the Respondent to the petitioner.
 - c) The Respondent no. 1 shall either deposit the cost of curing inadequacies as pointed out by the petitioner or submit the requisite Bank Guarantee as per regulations to the petitioner DHBVN 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 may 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 01/01/2025.

Date: 01/01/2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman

HERC