

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

Case No. HERC/P. No. 38 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.01743) Ansal Sushant City, Sector-6, Sonipat -131029, through Sh. Sanjay Gupta, President-RW

On behalf of the Petitioner

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

On behalf of the Respondent

Sh. Akhil Shandilya, Advocate for R-1

QUORUM

Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member

ORDER

1. Petition:

The petitioner vide its petition submitted as under:

- 1) That the present petition is being filed by Uttar Haryana Bijli Vitran Nigam (hereinafter referred to as "UHBVN/Petitioner") through Rajesh Arora, Superintending Engineer (Monitoring), Panchkula who is authorized to file the instant petition and is otherwise also well conversant with the facts of the present case.
- 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 another Developer i.e. TDI infratech Panipat. 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.
- 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."

- 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 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 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.

- 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-rate 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.
- 6) That the RWA of Ansal Sushant City, Sonipat (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 Petitioner, 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 PARTIES

- 7) That the Petitioner is a state Government Distribution Company and registered under the Companies Act, 1956 formed under the corporatization/restructuring of 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.
- 8) That the Respondent no. 1 is the developer of licensed residential plotted colony, the Ansal Sushant City Sonipat which is a plotted colony spreading over ~313.4968 Acres situated in Sector-62, Sonipat, Haryana. The Respondent no. 1 was granted following licenses by the Director (Town & Country Planning), Government of Haryana over the years under DTCP Scheme LC-411

SR. No.	Particulars	Description
1	DTCP Scheme No.	LC-411
2	Licenses Numbers	48-55 OF 2003, 4-11 OF 2004, 86-97 OF 2004, 128-131 OF 2004, 447 OF 2006, 448-454 OF 2006, 760-765, 769, 776, 778, 780, 781, 783, 788, 789 OF 2006, 129-1132 OF 2006, 39 OF 2008, 181 OF 2008, 31 OF 2012, 2 OF 2014, 10 OF 2020

3	Approved Lay out plan Area	313.4968ACRES
4	Area of the Scheme	313.4968 ACRES
6	Nos. of residential Plots	2712

The developer got approved the electrification plan for an area of 274.664 acre for 38 MVA in 2012, however, the area was increased to 313.4968 acre, which also includes one group housing project of 5.35 Acres and being same colony, the increased area of 313.4968 Acres is considered for calculation of ultimate load as per existing load norms which worked out to be 31.10 MVA.

- 9) That Respondent no. 2 is the Resident Welfare Association of the Ansal Sushant City, Sonipat. 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, Sonipat 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 –

- 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 sushant City, Sonipat which falls within the Petitioner’s Licence area without adequate electrical infrastructure to cater to the load as per applicable load norms.
- 11) That the Respondent no. 2, which is one of the Resident Welfare Association of the Ansal Sushant City, Sonipat through its representative, Sh. Sanjay Gupta 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 erratic supply of electricity before various Authorities/ Forums/ Courts.
- 12) That various owners/occupants/resident of Ansal Sushant City, Sonipat 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.

- 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.Ansal properties and Infrastructure and Anr. was filed by the DHVBN before this Hon'ble Commission seeking release of new electricity connections/additional load to distressed residents on voluntary payment of 'Development Charges' to DHVBN subject to adjustment/refund by Delinquent Developers therein by payment of cost to DHVBN or curing prevalent deficiencies.
- 14) That the Hon'ble Commission took cognizance of the matter and issued an Order dated 02.02.2022 permitting the DHVBN to release the new electricity connections/additional load on voluntary payment of development charges as an ad-interim measure and directed the DHVBN to keep a record of the charges paid by the applicants seeking 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:
- "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."

- 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”*
- 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 off with order that the ad-interim directions passed vide interim order dated 02.02.2022 are 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.”*
- 17) That in a similar like case 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 the existing 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."

- 18) That however, subsequent to the same, the representatives of the RWA 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.
- 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 for all such license colonies having deficient electrical infrastructure. The terms of the approved proposal are reproduced above.
- 20) That, the view of the proposal approved by the state Government as referred above, the petitioner filed the petition seeking urgent interim relief for the release of new connections to the new applicants/plot holders by the augmentation of electrical infrastructure/rectification of deficiencies in existing infrastructure to the extent feasible subject to the submission of development charges on-prorate basis voluntarily by the plot holders/new applicants. In addition, action was sought against the TDI Infratech Pvt. Ltd. For the defaults in creation of adequate electrical infrastructure with directions to deposit the requisite amounts in accordance with the directions to deposits the requisite amounts in accordance with the conditions of approved Electrical Plans and inadequacy in the project.

21) That the RWA of Ansal Sushant City, Sonipat (Respondent no. 2) has requested for the release of connections on the similar lines as is being sought in Petition for the TDI City, Sector-39, Panipat.

C. INTRIM URGENT RELIEF SOUGHT FOR THE MEMBERS OF THE RESPONDENTNO. 2 –

22) That in the present Petition, Petitioner is seeking similar interim reliefs for the owners/occupants/residents of the Ansal Sushant City, Sonipat 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, Sonipat by the release of new connections. Based 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 Sonipathave to pay development chargers 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.

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 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 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 CREATION OF ADEQUATE ELECTRICAL INFRASTRUCTURE -

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

- i. The Respondent no. 1 had approached the Petitioner for approval of Electrical Plan and for the plotted colony and the electrification plan was approved by Chief General Manager/Commercial, Panchkula vide Memo No. Ch-14/SS-403/216/CGM/C-1 dated 09.03.2012 for Ansal Sushant City Sonipat
- 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 and various other notices calling upon the Delinquent Developer to furnish cost or Bank Guarantees on account

of inadequate electrical infrastructure in its projects/colonies situated in sectors 62 Sonipat. The Petitioner Department in the said notice specifically made reference to the various provisions of the Electricity Act, 2003 and Regulations framed thereunder.

- iii. Keeping in view the latest decisions with the approval of State Government, the inadequacy in the project has been calculated afresh, after considering the infrastructure already created in the township, after excluding the cost of land required for sub-station, as 0.70 acre land earmarked for GIS electric sub-station (ESS) in the layout plan has been transferred to UHBVN and increased area of the scheme. After considering above and as per latest applicable load norms, the inadequacy amount worked out to be Rs 53.29 Crores for creation of electrical infrastructure to meet the power requirement of plot holders as per their ultimate load requirement. The details are attached.
- 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 release of 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 applicant 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 -

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

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

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

- 27) That by applying the above said formula, proposed Development charges computed for deficient project of Ansal Sushant City, Sonipat shall be determined. It is submitted that the charges are proposed to be applicable upto 31.03.2024 and are to be enhanced by 10% every

financial year thereafter. The new applicants of domestic category have the option to deposit proportionate “development charge(s)” in lump sum or in 12 EMI’s (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four per cent) would be allowed to domestic applicants/consumers opting to deposit development charges in lump sum in one go. 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.

- 28) The applicants of other than domestic categories would be required to deposit the proportionate development charges in one go before release of their connections as the load of other than DS categories would be quite higher and would require immediate creation of infrastructure to release the same. The above development charges, so deposited by the applicants/consumer would be refunded afterwards subject to recoveries that would be made from defaulting developers.
- 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 the Respondent no. 1.

F. LEGAL FRAMEWORK -

- 30) That the Hon’ble Commission has ample power to issue such directions as is necessary to ensure 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 giving that supply.
- 31) That in 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 empowers Petitioner to recover the expenditure referred to in Section 46 of the Electricity Act, 2003. The 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.”

- 32) That further the Petitioner 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:
4.2.3The 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.*"
- 33) That further under the Electricity Act, 2003 an electricity connection under Section 43 can be provided when infrastructure required for 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 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 provide electricity, the provisions of the Electricity Act, 2003 and the underlying objective thereof shall be rendered otiose.
- 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 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.
- 35) That the Hon'ble Commission in 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 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.” (

- 36) That further 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 Sonipat 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.”

- 37) That the Petitioner vide Sales Circular no. U-21/2020 dated 18.09.2020 circulated a procedure for assessment of creation of electrical infrastructure as per 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 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.

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

- 38) That the developers are obliged in law as well as contractually (in terms of 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 interaction of the following laws: -

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

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

H. RELIEFS SOUGHT -

- 40) That, in view of the foregoing submissions, the Petitioner herein is 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 accordance with the revised procedure mentioned in the submissions made above. The Petitioner further seeks action against the Respondent no. 1 for defaults in 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 and Para 25, 26 & 27 stated herein 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 respite of granting connections/additional load to applicants/consumers within the Projects in the manner mentioned in 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 electrical infrastructure of the project as per 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. 53.29 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 pendency of this Petition;
- d. Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondents and punish each of the persons in-charge of Respondents 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, however, some residents appeared and submitted that they are in distress due to inadequate electrical infrastructure in project by respondent developer and not getting new electricity connections. They further submitted that the developer will not appear as a case has already been filed in the NCLT for insolvency proceedings. Ms. Sonia Madan, Counsel for the petitioner, submitted that the present petition has been filed for interim relief for release of new connections to the new applicants/plot holders subject to submission of deployment charges on prorata basis voluntarily by the plot holders/new applicants and to direct the respondent no. 1 for curing inadequacy of Rs.53.29 Cr. or submit BG thereof. To give an opportunity of being heard, the Commission directs the respondent no.1 to appear on the next date of hearing.
 3. The case was heard on 21/07/2023. Ms. Sonia Madan, counsel for the petitioner submitted 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 connections are not being 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 ad-interim 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 on the similar line as allowed in the 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, 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 the 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 opt 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.

4. The case was heard on 11/10/2023. None appeared on behalf of the respondents. As none appeared on behalf of the respondents, therefore the Commission, directs the respondents to file their reply within four weeks.
5. The case was heard on 29/11/2023. Sh. Satyaveer Singh, Counsel for the respondent-developer submitted that the case was assigned to him on 28.11.2023 only and sought time to file the reply. The commission observed that sufficient opportunity for filing reply was given to the respondent-developer but to no avail. The respondent-developer vide interim order dated 11/10/2023 was directed to file reply with in four weeks but the respondent-developer through the Counsel is again seeking time, which implies that the respondent-developer is not serious in pursuing the case and avoiding to file reply on the pretext of changing Counsel every time. Therefore, the commission decided to impose a penalty of Rs. 15,000/- for not filing reply. The penalty was to be deposited in the Commission before next date of hearing. The Commission further directed the respondents to file the reply, within three weeks with advance copy to petitioner and the petitioner may file rejoinder, if any, with in one week thereafter.
6. The case was heard on 05/01/2024. None appeared on behalf of respondents. Ms. Aerika Singh counsel for the petitioner submitted that they have not received any reply from the respondent-developer. The Commission observed that the respondent failed to submit the reply in spite of being afforded sufficient opportunity and consequently, the case is adjourned for final arguments

7. Reply of Respondent-Developer dated 05/02/2024:

- 1) The answering Respondent, i.e. Ansal Properties and Infrastructure Limited (“Respondent No. 1”), is filing the instant response to the petition filed by the Uttar Haryana Bijli Vitran Nigam Limited (“Petitioner”/ “UHBVN”). It is submitted that the present petition i.e., HERC/ Petition No. 38 of 2023 (“Petition”) has been filed by the Petitioner pursuant to this Hon’ble Commission passing directions vide its order dated 18 May, 2022 in Case No. HERC/ Petition No. 55 of 2021. The Commission had directed the Petitioner as under:

“3. Sh. Varun Pathak, counsel appearing for the respondent no 1 and 11 submitted in detail the issues pertaining to the maintainability of the petition in its present form citing various provisions of the Conduct of Business Regulations along with provision of the Electricity Act 2003. He further submitted that each builder’s agreement is to be seen separately with the peculiar facts of the agreement. He further submitted that the load norms have been revised by DHBVN, due to which there is change in inadequacies.

4. 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.”

- 2) All contentions have been taken in the alternative and without prejudice to each other and nothing stated herein shall be deemed to be admitted unless the same has been admitted thereto specifically by Respondent No. 1. Respondent No. 1 also seeks this Hon’ble Commission’s leave to file an additional affidavit or further submissions to better assist this Hon’ble Commission in adjudicating this Petition.
- 3) The present Petition has been filed by UHBVN under the following heads, namely, “*Petition under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 (“Duty to Supply Regulations”) and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 (“Supply Code”) read with Sections 142 and 146 of the Electricity Act, 2003*”, seeking the following reliefs:

“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 [N]o. 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. 53.29 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 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 [N]o. 1 and punish each of the persons in-charge of Respondent [N]o.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."

MAINTAINABILITY AND JURISDICTION:

- 4) Firstly, it is settled law that the Hon'ble Commission, being a statutory tribunal, cannot travel beyond the provisions of the Electricity Act, 2003 ("the Act"). 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, wherein the Hon'ble Supreme Court held as under:

“39. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.”

- 5) 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. The relevant portion of the judgement is reproduced below for ease of reference:

“49. 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. ...

...

53. ... 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.” (Emphasis Supplied)

- 6) 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. The relevant portion is reproduced below for ease of reference:

“34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section

42(5) and thereafter Section 42(6) read with the Regulations of 2003 as referred to hereinabove.”

- 7) 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. The relevant portion of the judgement of the Hon’ble Supreme Court in Gujarat Urja (*supra*) is reproduced below for ease of reference:

“26. It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word “and” in Section 86(1)(f) between the words “generating companies” and “to refer any dispute for arbitration” means “or”. It is well settled that sometimes “and” can mean “or” and sometimes “or” can mean “and” (*vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 404.*)”
(*Emphasis Supplied*)

- 8) 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.
- 9) 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. Sections 43, 46 and 50 of the Act are reproduced below for ease of reference:

“Section 43. (*Duty to supply on request*): -

(1) *Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

“Section 46. (Power to recover expenditure):

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

“Section 50. (The Electricity Supply Code):

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.”

- 10) A bare perusal of sections 43, 46 and 50 makes it clear that it deals with the universal supply obligation of the distribution licensee under the Act. Further, section 46 deals with the power of the SERC to authorise the distribution licensee to recover charges for its universal supply obligation by way of regulations from persons receiving supply of electricity. Further, section 50 deals with the supply code which deals with various matters pertaining to supply of electricity by the distribution licensee. The power to frame regulations by the SERC vest under section 181(2) (t), (x) and (zp) of the Act. None of the sections of the Act, i.e. 43, 46 and 50, enable exercise of jurisdiction for the

purposes of the present petition preferred by the Petitioner i.e. distribution licensee before this Hon'ble Commission. 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.

- 11) The regulations invoked by the Petitioner for the purposes of exercise of jurisdiction of this Hon'ble Commission are Regulations 8 and 9 of Duty to Supply Electricity on request, Power to Recover Expenditure incurred in Providing Supply and Power to require Security Regulations, 2016 ("2016 Regulations") and Regulation 16 of The Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 ("Supply Code"). The 2016 Regulations have been framed under sections 181 (2) (t, v) read with 43, 46 and 47 of the Act and the Supply Code has been framed under sections 181 (2) (x) read with section 50 of the Act. The relevant regulations are reproduced below for ease of reference:

"2016 Regulations:

8. POWER TO GIVE DIRECTIONS

The Commission may from time to time issue such directions and orders as considered appropriate for implementation of these Regulations.

9. REMOVAL OF DIFFICULTIES

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by an order, make such provision, not inconsistent to the provisions of the Act and these Regulations, as may appear to be necessary for removing the difficulty."

"Supply Code:

16. Powers to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, give the necessary clarifications, not being inconsistent with the Electricity Act, 2003, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties."

- 12) 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. The Hon'ble Supreme Court, sitting in a Constitutional Bench, *Madeva Upendra Sinai v. Union of India*, (1975) 3 SCC 765, held as under:

“39. ... In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the legislature sometimes thinks it expedient to invest the executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and nicknamed as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-Independence era.”

- 13) 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. The Hon’ble Supreme Court succinctly in paragraph 40 of *Madava Upendra Sinai (supra)* stated as under:

“40. Now let us turn to clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a “difficulty” is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again, the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not a 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. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act.”

- 14) 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.
- 15) Further the Petitioner has relied on sections 142 and 146 of the Act, to invoke the jurisdiction of this Hon'ble Commission. These sections are reproduced below for ease of reference:

“Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

“Section 146. (Punishment for non-compliance of orders or directions):

Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.”

- 16) 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, wherein the Hon'ble Appellate Tribunal for Electricity

(“APTEL”) by its judgement dated 19.04.2011 laid down the following procedure for section 142:

“25. The perusal of this section would reveal that the State Commission should follow the following procedure before finding the person guilty of violation of provisions or directions and imposing the penalty as contemplated under Section 142 of the act:

“(i) When a complaint or a Petition is filed by a person before the Appropriate Commission against a person for taking action under Section 142 of the Act or when an information is received, the Appropriate Commission has to first find out as to whether there are prima facie allegations in the petition or complaint or information received, that the person has contravened the relevant provisions or violated the directions issued by the Appropriate Commission. In other words, the Appropriate Commission, before entertaining the petition or complaint for taking action under Section 142 of the Act, at the outset has to satisfy itself by applying its mind as to whether the allegations contained in the said Petition or complaint or information would constitute contravention or violation of any of the provisions of the Act or rules or regulations made there under or directions issued by the Appropriate Commission which necessitates the issuance of show cause notice to conduct inquiry under section 142 of the Act. Thus, the satisfaction to entertain the complaint is first and foremost requirement.

(ii) After arriving at such a satisfaction, the Appropriate Commission shall entertain the petition and issue notice to the person concerned intimating that the Appropriate Commission is satisfied with the particulars of the specific allegations that the person concerned has violated the provisions or directions and calling upon him to show cause as to why that person be not proceeded with under section 142 of the Act and why the penalty be not imposed upon him for such allegation of the contravention or a violation thereby, the Appropriate Commission is mandated to give opportunity to the said person to offer his explanation through his reply to the charge levelled against him referred in the show cause notice by giving sufficient time.

iii) On receipt of the said explanation offered by the person concerned, the Appropriate Commission has to scrutinize and find out as to whether his explanation is satisfactory or not. If it is satisfied, it may drop the proceedings under Section 142 of the Act. On the other hand, if the Appropriate Commission feels that the explanation is not satisfactory, the Appropriate Commission can summon him to appear before the Commission and frame the specific charges in his presence and intimate him that the appropriate Commission propose to

conduct inquiry with regard to those charges and give opportunity to the person concerned of hearing to offer his further explanation and to produce materials to disapprove those charges.

(iv) After considering the reply and evidence available on record and after hearing the parties, the Appropriate Commission then has to find out as to whether those charges framed against him have been proved or not in the light of the submission and the evidence produced by the person concerned. If the Appropriate Commission is of the opinion that the charges framed are not proved, the proceedings at that stage can be dropped. On the contrary, if the Appropriate Commission is satisfied that those charges have been proved, it may find *him guilty and impose penalty*.

26. The above procedure in penalty proceedings would clearly indicate that the State Commission shall first find out the prima facie satisfaction and then issue show cause notice to the person concerned who has to file reply and thereafter the State Commission has to frame charges and give further opportunity to the person concerned to place materials to disprove the charges and then decide the case on the basis of the evidence available on record.

27. From the *above*, it is clear that the State Commission has to arrive at prima facie satisfaction, that it is a fit case for initiation of Section 142 of the proceedings and then it has to record its satisfaction in the show cause notice in respect of the specific allegations and send it to the person for the purpose of giving an opportunity to such a person to defend or rebut such specific allegation. These procedures are contemplated to follow the principle of natural justice by giving full opportunity to the Appellant to defend the allegation.

28. Thus, there are two phases. (i) One is to arrive at a satisfaction to issue show cause notice while initiating penalty proceedings and (ii) Next is, after issuance of the show cause notice, the person must be heard to arrive at a satisfaction whether such contravention has actually been committed or not. Only then, the State Commission can come to the conclusion whether to find him guilty or not under Section 142 of the Act. Thus, it became evident that the show cause notice should contain (i) specific allegations of violation, (ii) prima facie satisfaction over the said allegations (iii) issuance of show cause notice in respect of specific allegations by way of giving an opportunity to the concerned person to rebut those allegations. All these three ingredients must find place in the notice which is a show cause notice.”

- 17) 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. The relevant portion of R.N. Dey (*supra*) is reproduced below for ease of reference:

“7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.”

- 18) 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.
- 19) 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

- 20) 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. This becomes further clear from the mandate prescribed under sections 62 (3), 62 (5) and 86 (3) of the Act. Regulation 20 of the Conduct of Business, sections 62 (3), 62 (5) and 86 (3) are reproduced below for ease of reference:

“Conduct of Business:

20. All matter having an impact on the retail supply tariff, including but not limited to ARR and PPA, shall be discharged through public hearing to be heard also, if required, at divisional headquarters as may be so determined.” (Emphasis Supplied)

“Section 62 (3)

The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.” (Emphasis Supplied)

“Section 62 (5)

The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.” (Emphasis Supplied)

“Section 86 (3)

The State Commission shall ensure transparency while exercising its powers and discharging its functions.”

- 21) Infact this Hon’ble Commission has 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.
- 22) 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.

- 23) 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:

- I. Without prejudice to the above arguments on jurisdiction and maintainability, the Respondent No. 1 is filing a response on merits. Despite its due diligence, in the event the Respondent No. 1 is unable to present all documents before this Hon'ble Commission, it seeks the leave of this Hon'ble Commission to do so subsequently, if required and if directed to do so.
- II. Petitioner states at pages 63 and 64 (Annexure P-8) that Respondent No. 1's inadequacy amounts to a total of Rs. 53.29 crores. It is submitted that the Respondent No. 1 has already paid the requisite external development charges and as such nothing further is payable. *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.
- III. 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.
- IV. 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:

- V. The contents of paragraph 1 are a matter of record and warrant no response.
- VI. The contents of paragraph 2 are denied except whatever is a matter of record. 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. The contents of the preliminary submissions and the reply on merits are reiterated.
- VII. The contents of paragraphs 3 to 5 are a matter of record and warrant no response.
- VIII. The contents of paragraph 6 are denied except whatever is a matter of record. 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. The contents of the preliminary submissions and the reply on merits are reiterated.
- IX. The contents of paragraphs 7 to 9 are a matter of record and warrant no response.
- X. The contents of paragraph 10 are denied. 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 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. The contents of the preliminary submissions and the reply on merits are reiterated.

- XI. The contents of paragraph 11 are denied for want of knowledge.
- XII. The contents of paragraph 12 are denied. 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”. The contents of the preliminary submissions and the reply on merits are reiterated.
- XIII. The contents of paragraphs 13 to 20 are a matter of record and warrant no response.
- XIV. The contents of paragraphs 21 and 22 are denied, to the extent the Petitioner asserts that Respondent No. 1 failed to meet its obligations as per the established law or that it failed to develop adequate 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. The contents of the preliminary submissions and the reply on merits are reiterated.
- XV. The contents of paragraph 23 are denied, to the extent the Petitioner asserts 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. The contents of the preliminary submissions and the reply on merits are reiterated.
- XVI. The contents of paragraphs 24 and 25 are denied except whatever is a matter of record. It is denied that demand notice dated 18.08.2021 was received by the Respondent No. 1. The contents of the preliminary submissions and reply on merits are reiterated. It is reiterated that the onus lies with the distribution licensee i.e. the Petitioner and not Respondent No. 1 to both build and grow (in sum develop) the requisite electrical infrastructure. It is further denied that Respondent No. 1 is liable to pay any amount, much less the “calculated” “inadequacy amount” of Rs. 53.29 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. The

contents of the preliminary submissions and the reply on merits are reiterated.

- XVII. The contents of paragraph 26 are a matter of record and warrant no response.
- XVIII. The contents of paragraphs 27 and 28 are denied. Respondent No. 1 states that the obligation lies with distribution licensee i.e. the Petitioner and not Respondent No. 1 to both build and grow (in sum develop) the requisite electrical infrastructure. It is further denied that Respondent No. 1 is liable to pay any amount, much less the “calculated” “inadequacy amount”. It is stated that the absence of adequate electrical infrastructure is an unfulfilled obligation of the Petitioner and not the Respondent No. 1. Instead, it is the distribution licensee (the Petitioner), which is duty bound under the Act, especially section 43, to provide connections to new consumers. It is denied that the development charges sought to be recovered by the Petitioner from the consumers i.e. Respondent No. 2 are recoverable from the Respondent No. 1. The contents of the preliminary submissions and the reply on merits are reiterated.
- XIX. The contents of paragraph 29 are denied. 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. The contents of the preliminary submissions and the reply on merits are reiterated.
- XX. The contents of paragraphs 30 to 36 are wrong and denied. 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. The contents of the preliminary submissions and reply on merits are reiterated.
- XXI. The contents of paragraph 37 are denied. It is specifically denied that the Petitioner has established any defaults at the Respondent No. 1’s

end. The contents of the preliminary submissions and reply on merits are reiterated.

XXII. The contents of paragraphs 38 and 39 are denied. 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. The contents of the preliminary submissions and the reply on merits are reiterated.

XXIII. The contents of paragraph 40 are denied. 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 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. The contents of the preliminary submissions and the reply on merits are reiterated.

XXIV. 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 14/03/2024. None appeared on behalf of respondents. Ms. Sonia Madan appearing for the petitioner submitted that similar matters are scheduled for final arguments on 20/03/2024 and Sh. Varun Pathak counsel for the respondent had already requested the Commission to adjourn this case to 20/03/2024 during hearing on 28/02/2024 so that all the cases may be argued simultaneously. Ms. Madan further, assured to submit rejoinder shortly. The Commission adjourns the matter and further directs both parties to be present for final arguments on next date.

9. **Rejoinder of petitioner Received on 18/03/2024**

- 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.
- 2) It is submitted that all allegations made by the Respondent No. 1 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.
- 3) At the outset, the Petitioner denies all and singular allegations, contentions and submissions of the Respondent No. 1 which is contrary to or inconsistent with what is stated in the 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.
- 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 -

- 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 -

- 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 the Hon'ble Commission to exercise adjudicatory, regulatory as well as administrative functions so as to give effect to the intent and purpose enshrined under the 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 top 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.
- 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.

- 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. The relevant provisions are reproduced herein below for ready reference:

Section 43 (Duty to supply on request)

1. Save as otherwise provided in the Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premise, within one month after receipt of the application rearguing such supply.

Provided that where such supply requires extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

...

Section 45 (Power to Recover Cost)

1. Subject to this section, the prices to be charges by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.

...

(3) the charges for electricity supplied by a distribution licensee may include

(a)...

(b) a rent or other charge in respect of any electric meter or electrical plant provided by the distribution licensee.

Section 46. (Power to recover expenditure):

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

Section 2 (20) "electric line" means any line which is used for carrying electricity for any purpose and includes –

- (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and*
- (b) any apparatus connected to any such line for the purpose of carrying electricity;*

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

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

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) In terms of Section 46 of the Act, as is mentioned above, 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"). The Regulation 4.1 of said regulation empowers UHBVN to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.1 reads as under:

"Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations." (Emphasis supplied)

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.

- 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.
- 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’), wherein in the Statement of Object and Reasons to the Regulations, it was specifically mentioned that -
“From the averments made by the participants during the interaction held and the written submissions made by them, the Commission framed the following issues for consideration.
i) *The developers have not constructed adequate electrical infrastructure as per approved plan in some of the residential complexes with the result, the residents are not getting uninterrupted and quality power supply.*

xxxxxx

Commission observed as under: -

- i) *That in order to ensure continuity and reliability of supply in such Societies/Commercial Complexes/Shopping Malls/Industrial Estates, SEZ, the Electrical infrastructure has to be necessarily in place as per approved electrification plan, prior to the release of electricity connections...”*

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.

- 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. In this regard, relevant portion of Regulation 3.10 and 4.12 of the Duty to Supply Regulations is reiterated below for ease of reference:

3.10. Execution of work by the applicant: -The applicant can get the work of extension of distribution system carried out on his own. In that case he shall get the same carried out through a Licensed Electrical Contractor and pay supervision charges to the licensee ...

4.12 Special Provisions in case the applicant opts for execution of extension of distribution system on his own and in case of single point supply.

4.12.1 In case the applicant opts to carry out the work on his own, he shall get the same carried out through a Licensed Electrical Contractor as per provision under Regulation 3.10.

4.12.2 The work relating to electrification of Urban Estates/Group Housing Societies/Employer's Colonies will be executed by the concerned department /colonizer/society/employer after the licensee approves the electrification plan and the estimates prepared on the basis of Regulation 4.8.4 for such plans and the applicant shall pay supervision charges to the licensee in accordance with Regulation 3.10. At the time of energisation of the system¹ the licensee shall ensure that the system has been laid as per the approved electrification plan. The applicant applying for connection in such area shall not pay service connection charges to the licensee as long as his load is within the parameters of the sanctioned plan. Provided that if at the time of energisation of the system it is noted that the concerned department /colonizer/society has not executed the complete electrification work as per the electrification plan approved by the licensee¹ the colonizer/developer shall be required to furnish the Bank Guarantee equivalent to 1.5 times of the estimated cost of the balance work to be executed as per the approved plan. The licensee shall not release single point connection or individual

connections to the residents of such areas without taking requisite Bank Guarantee.”

- 13) The aforesaid provision of Regulation 4.12.2 was amended by the Hon’ble Commission on 19.03.2020 and the amended provision reads as under:

“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. Provided, in case a Developer

fails to complete installation of requisite Electrical Infrastructure for the phase within the time period mentioned in execution plan, the Distribution Licensee shall have the following options:

(i) To encash the BG for said phase and get the balance work of such phase executed.

(ii) to extend the time period of such phase on furnishing a BG equivalent to 1.5 times of the estimated cost of the work of such phase earlier provided by the Distribution Licensee.

(iii) To cancel the Electrification Plan and encash all the BGs submitted by the Developer, if the developer does not inform the Distribution Licensee about commencement of development work(s) in subsequent phase(s) and does not apply for obtaining the assessment of the cost of Electrical Infrastructure to be created before commencement of development work therein

(f) The Developer, immediately upon expiry of time period of a phase as mentioned in aforesaid execution plan shall apply for verification of work completed.

(i) Distribution Licensee upon such verification, if satisfied that the work has been duly completed as per the approved electrification plan, a certification of completion shall be issued to the Developer in respect of the concerned phase.

(ii) If upon such verification it is found that the work either has not been completed or the completed work is not in conformity with the approved electrification plan, the Distribution Licensee shall have the options as mentioned in proviso to sub paragraph (e) above. Provided that, if the Developer does not apply for aforesaid verification then the Distribution Licensee shall have the right to Suo moto carry out inspection of the work done and take steps mentioned above in.

(g) Distribution Licensee shall carry out the supervision of the work of installation of Electrical Infrastructure during phases as declared in the execution plan. If the Distribution Licensee finds that work being carried out by the developer is not in conformity with the approved electrification plan and / or of poor quality, the licensee shall have the options to take action as mentioned in proviso to sub paragraph (e) above

(h) All BGs required to be submitted by the Developer shall be irrevocable and unconditional and shall be valid for a period equal to 90 (ninety) days beyond the completion period of such phase in respect of which Developer is required to submit the said BG”

- 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. Regulation 4.2.3 and 4.2.4 are extracted and reproduced below:

“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.

4.2.4 In case of a new connection, the consumer shall bear service connection charges, i.e. the cost of extension of service line from the distribution main to the point of supply.”

- 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 HRDUA Act, 1975 as well as the Electricity Act, 2003 and Regulations framed thereunder as emphasised above, have not been discharged.
- 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.
- 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.
- 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.

- 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.
- 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 extent 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 -

- 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.
- 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."*
- 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 Build Well 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.
- 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 has already been 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 No.1 is untenable being already settled.
- 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 -

- 26) It is the contention of the Respondent No.1 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.
- 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. The relevant regulations are reproduced hereunder for ease of reference:

8. POWER TO GIVE DIRECTIONS

The commission may from time to time issue direction and orders as considered appropriate for implementation of these Regulations.

9. REMOVAL OF DIFFICULTIES

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, give the necessary clarification, not being inconsistent or expedient for the purpose of removing difficulties.

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.

- 28) Further, Regulation 16 of the Supply Code also provides a "removal of difficulty" clause. The same is reproduced herein below for ease of reference:

"16. Power to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, give necessary clarifications, not being inconsistent with the Electricity Act, 2003, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties."

- 29) It is the contention of the Respondent No.1 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.
- 30) The reliance of the Respondent on the decision in the case of *Madeva Upendra Sinar 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 *Madeva Upendra Sinar (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.
- 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.
- 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.
- 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 -*
- 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.
- 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:-
1. 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");
 2. Electricity Act, 2003;
 3. Duty to Supply Regulations;
 4. Supply Code; and
 5. Single Point Supply Regulations.
- 36) It is worthwhile here to point out that even as per 1975 Act and 1976 Rules and subsequent orders issued by DTCP, the liability for creation of internal infrastructure is clearly the liability of Developer. The

relevant provisions of the Act are reproduced hereunder for ready reference -

“ 3. Application for licence—(3) After the enquiry under sub section (2), the Director, by an order in writing, shall — (a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per cent of the estimated cost of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes as certified by the director and has undertaken—

- (i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with licence granted;*
- (ii) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, in a period as may be specified, and failing which the land shall vest with the Government after such specified period, free of cost, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit:*

xxx”

“(6) After the colonizer has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved design and specifications, he may apply to the Director for grant of completion or part-completion certificate. The Director may enquire into such matters, as he deems necessary before granting such certificate.”
(Emphasis Supplied)

The Haryana Development and Regulation of Urban Area Rules, 1976 -

“2. Definitions.- (b) “amenity” includes roads, water supply, street lighting, drainage, sewerage, public parks, schools, [play grounds], hospitals, community centers and other community buildings, horticulture, land escaping and any other public utility service;”

“(e) “layout plan” means a plan of the colony depicting the division or proposed division of land into plots, roads, open spaces, etc, and other details as may be necessary;”

“12. Grant of licence [Section 3 (3) and (4)].— (1) After the applicant has fulfilled all the conditions laid down in rule II to the satisfaction of the Director , the Director shall grant the licence in form LC-V. (2) The licence granted under sub-rule 1) shall be valid for a period of two years from the date of its grant during which period all development works in the colony shall be completed and certificate of completion obtained from the Director as provided in rule 16.”

“16. [Completion certificate/ Part Completion Certificate [Section 24].— (1) After the colony has been laid out according to approved layout plans and development works have been executed according to the

approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.” (Emphasis Supplied)

- 37) Further, DTCP vide Office Order dated 21.01.2015 bearing Endst. No. LC-489-JE(BR)-2014/ 1269 on Electrical Infrastructure (Annexure P-10), specifically ordered instructions for completion of electrical infrastructure as a pre-condition for issuance of Occupation Certificate. The relevant extract of Order reads as under -

“ It has been observed that in the licence cases while issuing licence a clause regarding approval of Electrical (distribution) service plan/ estimates from the agency responsible for installation of external electrical services i.e. HVPN/UHBVNL/DHBVNL Haryana and for completing the same before obtaining completion certificate for the colony is imposed in the agreement. The said clause is also reproduced below:-

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

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.”

- 38) Admittedly, the Respondent has created partial infrastructure in the instant case, which establishes that they accepted their obligation to develop such infrastructure. In light of the foregoing statutory obligations, it does not lie in the mouth of the Respondent developer to now allege that they were not responsible to create electrical infrastructure.
- 39) 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.

- 40) It is further pointed out that amount of inadequacy computed by the Petitioner is based on the norms prevailing at the time of the filing of the Petition. The voltage level of internal electrical infrastructure depends on the ultimate load. In the present case, as per the approved plan, the ultimate voltage level is 33 KV but for complete ultimate load of colony, optimum voltage level is 132 KV. Keeping in view the ultimate requirement, the difference in cost of 132 KV & 33 KV has been taken to compute inadequacy amount. The Respondent is liable to pay such amount for creation of electrical infrastructure to feed the project residents.

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 -

- 41) 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.

- 42) 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.

- 43) 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 No.1 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;

44) The Respondent No. 1 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.

45) Further, the contention of the Respondent No.1 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.

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 -

- 46) The contention of the Respondent No.1 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 No.1 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.

- 10.** The case was heard on 20/03/2024. Sh. Varun Pathak, counsel for the respondent, submitted that as the matter is similar to earlier heard petition No. 34 today, hence the same may be listed on the same day. Acceding to request, the Commission adjourns the matter 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 weeks 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. Sh. Akhil Shandilya counsel for the respondent developer requested to grant time for filing response to the revised inadequacy amount intimated by the petitioner. 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

- 1) The Petitioner has filed the above titled petition seeking action against Respondent no. 1 i.e. Developer for defaults in the creation of adequate electrical infrastructure and seeking directions to be issued to Respondent no. 1 to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.
- 2) The instant petition was last listed on 12.08.2024, wherein on the statement made by the Petitioner intimating regarding revision in load norms, the Hon'ble Commission directed the Petitioner to file revised amount of inadequacy based on revision in load norms. In compliance thereof, Petitioner is filing the present submissions.
- 3) After a thorough computation of inadequacy as per revised load norms, it was found that there is slight variation in inadequacy amount, inasmuch as the same has been reduced from 0.96 crores to 0.7592 crores.
- 4) At the outset, it is submitted that the UHBVN has circulated the revised load norms vide sales circular no. U-25/2024 dated 26/07/2024. The said norms are applicable to residential plotted colonies, residential group housing colonies as well as commercial areas and industrial plots. A copy of said sales circular is appended as annexure P-11.
- 5) As per the revised load norms, the inadequacy amount has been reduced from 0.96 crores to 0.7592 crores. The detailed computation in that respect is appended as Annexure P-12.
- 6) In view of the foregoing, the Petitioner prays that the Hon'ble Commission may kindly be pleased to-
 - i. Take on record copy of Annexure P-11 and P-12 as referred above;
 - ii. Direct that the inadequacy amount wherever in original petition may kindly be read as Rs. 0.7592 crores with reference to Annexure P-12.

Inadequacy amount of Sushant City, Sonipat as per revised load norms

DTCP scheme no. - LC-411 (Area of scheme - 313.4968 acres) Ansal City - Residential plotted colony No. of plots - 2712	Particulars	As per previous load norms	As per revised load norms
Load	Total inadequacy amount	26.32 MW/29.24 MVA	24.25 MW/ 26.95 MVA
	Per KW rate to be deposit by residents	53.79 Cr.	51.36 Cr.
	Residential - Rs. 20604.34/-	Residential - 21303.57	
Group Housing	Commercial - Rs. 20844.07/-	Commercial 21986.33	
	Community - Rs. 20491.01 /-	Community - 21347.44	
	1.7 MW/1.86 MVA	1.322 MW/1.469 MVA	
Total	Total inadequacy amount	0.96 cr.	0.7592 cr.
	Per KW rate to be deposit by residents	Rs. 5648.62 /-	Rs 4466.19/-
	Load	28.02 MW/31.1 MVA	25.57 MW/28.419 MVA
	Inadequacy amount	54.25 cr.	52.1192 cr.

(i) Revised load norms circulated vide sales circular no. U-25/2024 dated 26.07.2024.

(ii) Sonipat City which has now been classified in Class-A City.

(iii) As impact, there is no change in residential load, as load calculations were done as per Class-A only in the filed petition.

(iv) However, for commercial load, the load norm have decreased from 16 KW (Class-A) to 11.2 KW (Class-A) & community sites load also increases for example nursing home load increases from 75 KW to 125 KW, because of which the ultimate load has increased slightly from 31.1 MVA to 28.419 MVA.

(v) For group housing the demand factor reduces from 0.5 to 0.45 due to which load also decreases.

(vi) Due to decrease in load, the total inadequacy amount slightly decreases.

(vii) The impact of revised load norms is there in the cities of Karnal, Panipat (A to B) and Ambala, Rohtak (A to C) and Kurukshetra, Yamunanagar, Jagadhari & Kaithal (B to C).

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

1) HERC/PRO 38 of 2023

Sr. No.	Particulars	Date/ Details
1.	Project Involved	Ansal Sushant City, Sonipat Sector 6, Sonipat
2.	Area of Project	2712 Plots in 313.4968 acres
3.	Revised Electrification Plan approved on	09.03.2012 (Annexure P-61 Page 55)
4.	Ultimate Load	25.57 MW/ 28.419 MVA (Annexure P-12)
5.	Inadequacy Amount	Rs. 52.1192 crores
6.	Land for Sub-station	0.70 Acres of Land has been transferred by Developer on which GIS S/Stn. has to be built.
7.	New load norms circulated vide Sales Circular No. U-25/2024 on	26.07.2024 (Annexure P-11)

- 2) 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 al/ 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)

Commission's Analysis and Order

- 19.** The Commission vide its interim order dated 21/07/2023 as an ad-interim measure, to help out the distressed residents, allowed 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 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)

1. 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.52.1192 Cr. remains in the Project developed by the Respondent no. 1 (As per written submissions dated 03/12/2024 of the petitioner) 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.52.1192 Cr. shall be cured by the Respondent within one year;
 - 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