

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

**Case No. HERC/PRO- 08 of 2021**

**Date of Hearing : 24.08.2021**

**Date of Order : 31.08.2021**

**In the Matter of**

**Application Under Section 142 and 146 of the Electricity Act 2003 for Non Compliance of the orders of the forum for redressal of Consumer Grievance, Dakshin Haryana Bijli Vitran Nigam Limited , Hissar Vide Order dated 30.10.2020 in case No. DH/CGRF-3143/ 2020.**

**Petitioner**

Naresh Kumar Jindal, Flat No. 402, Tower- C2, Uniworld Gardens-II, Sector-47, Gurugram – 122018

**V/s**

**Respondents**

1. Unitech Realty Pvt. Ltd. through its Chairman / Managing Director Sh. Yudhvir Singh Malik, C/O Unitech Ltd., 8th Floor, Block-B, Signature Tower, South City- 1, Gurugram- 122007.
2. The Uniworld Gardens II Apartment Owners Association through its President Sh. Gursimran Singh, R/O Flat No. 004, Tower- C1, Uniworld Gardens II, Sector – 47, Gurugram – 122018.
3. XEN 'OP' Division, DHBVN, Sohna, Pocket-H, Nirwana Country, Vikas Marg, Sector- 47, Gurugram- 122018.
4. SDO 'OP' Sub Division, DHBVN, Sohna Road, Pocket- H, Nirwana Country, Vikas Marg, Sector- 47, Gurugram -122018
5. The Nodal Officer, CGRF, DHBVN, Block, Ground Floor, Vidyut Sadan, Vidyut Nagar, Hissar- 125005.
6. Chairman / Managing Director, DHBVN, Vidyut Sadan, Vidyut Nagar, Hissar – 125005.

**Present**

**On behalf of the Petitioner**

Shri Naresh Kumar Jindal, Self

**On behalf of the Respondent**

1. Shri Sidharth Malhotra, Advocate for R-1
2. Ms Nikita Chowkse, Advocate for R-3,4 & 6
3. Ms Drishtana Singh, Advocate for R-2

## QUORUM

**Shri R.K. Pachnanda, Chairman**

**Shri Pravindra Singh, Member**

**Shri Naresh Sardana, Member**

## ORDER

### 1. BRIEF BACKGROUND OF THE CASE:

The petitioner has submitted as under:

- 1.1 The applicant, Naresh Kumar Jindal, is the registered owner of Flat No. 402, Tower-C2, World Gardens II, Sector-47, Gurugram-122018, Haryana, who filed a complaint before the CGRF, DHBVN, Hissar.
- 1.2 The Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Niga, Hissar, passed a speaking order dated 30.10.2020 vide case no. DH/CGRF-3143/2020 in the matter of Naresh Kumar Jindal versus XEN (OP) Division, DHBVN, Sohna and SDO (OP) Sub Division, DHBVN, Sohna Road, Gurugram.
- 1.3 Relevant para of the impugned order passed by CGRF, Hissar (order DH/CGRF – 3143/2020), is reproduced herein below:

*“DHBVN is fully authorized by the Regulation to scrutinize the record of energy bills being delivered to the individual consumers by the RWA/Developer. The respondent SDO is directed that previous record of the energy bills delivered by the RWA to individual consumers may also be scrutinized in light of the relevant provision of the Regulation of April 2020. The respondent SDO is also directed to ensure that the electricity being consumed by the individual consumers and the common area is recorded separately and billed separately. SDO and RWA must ensure that the energy meter records the licensees' supply and DG set consumption separately and also, no one is authorized to make changes in the individual energy meter put up by RWA to account for any other charges other than electricity. In precise terms, it is mandatory for the RWA to keep the electricity business entirely separate from any other expenses, charges whatsoever, to maintain complete transparency and to keep the electricity related records available for its scrutiny by the licensee. Respondent SDO is further directed to issue notices to the RWA/ Developer*

*maintaining the individual meters inside the society to comply with the directions as contained in the Regulation and ensure compliance of the notices so served under the provisions of relevant law".*

*Case is closed. No cost on either side.*

*However, complainant is at liberty to file appeal with electricity OMBUDSMAN, HERC, Sector-4, Panchkula if he is not satisfied with the decision of the CGRF.*

*As required under Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020, implementation of this decision may be intimated by the respondent SDO to the Forum within 30 days from the date of this receipt"*

- 1.4 As the impugned CGRF order was not complied with, an execution application was filed with the CGRF on 21/12/2020 for implementation of the above stated order.
- 1.5 A notice was issued to the respondents to comply with the order. However, no action has yet been taken. Feeling aggrieved, the petitioner has preferred this present petition before the Commission.

**STATEMENT OF THE RELIEF SOUGHT :**

- 1.6 Pass orders to impose harsh penalty, award punishment and initiate action against the respondents number 1 and 2; Unitech Realty Pvt. Ltd. and the RWA ; Uniworld Gardens II Apartment Owners Association (Regd.) for noncompliance of orders dated 30.10.2020; under section 142 and 146 of the Electricity Act 2003 .
- 1.7 Pass orders for execution of the orders passed on 30.10.2020 by the Honourable CGRF, DHBVN .
- 1.8 Initiate Contempt proceedings against the respondents number 3 to 6; Chairman/ Managing Director of DHBVN, SDO/XEN/JE/Area In -charge for their failure to implement the orders, other noncompliance during the proceedings of the case and not implementing the directions and notifications of the HERC resulting in free hand to builders/RWAs to exploit and extort money from the innocent consumers.
- 1.9 Pass any other order as the Commission may deem fit.

**2. REPLY DATED: 23.08.2021 FROM RESPONDENT NO.1:**

The respondent no. 1 questioned this petition on four main grounds, which are as under:

**A: Maintainability:**

- 2.1 That when the applicant has already filed an execution application before the competent jurisdiction i.e. The CGRF, DHBVN (Gurugram), the applicant cannot abuse the process of law by filing another application on the same issues seeking the same relief before this Hon'ble Commission (HERC), Panchkula, for the execution of the order dated 30.10.2020. Therefore, the instant application is liable to be dismissed on the ground of forum hunting and the applicant should be estopped to take shelter under two different authorities i.e. The CGRF (Gurugram) and HERC (Panchkula) against the same order only to harass the respondent.
- 2.2 That, the appropriate remedy available with the applicant is to approach the Ombudsman as per Section 42 (6) of the Electricity Act, 2003. It is germane to mention herein that even in the order dated 30.10.2020 passed by the Ld. Forum, Gurugram, it has been clarified on the same position regarding the appropriate forum. The appropriate para of the order dated 30.10.2020 is reproduced as under:

**“...However, complainant is at liberty to file appeal with Electricity Ombudsman, HERC, Sector 4, Panchkula if he is not satisfied with the decision of the CGRF”.**

- 2.3 That no such violation under the Act, Order or Notification as alleged, has been made by the answering respondent and the action of the petitioner is a motivated one.

**B: About the complainant**

- 2.4 That, the applicant is the Ex-President of the Resident Welfare Association and the present action is a motivated one. Further the applicant purchased an apartment in Uniworld Gardens -II in the year 2011 and since then he is not residing there and has been continuously renting out his apartment. Therefore, the applicant is an investor and not a consumer and is not using the facilities for himself for which he is seeking the relief from this Hon'ble Commission.
- 2.5 That the applicant, by way of instant application, is trying to address his

personal vendettas against the respondents and has been 'Forum Hunting' by filing multiple litigations just to harass the respondents. It is germane to mention that the applicant has even filed a criminal complaint before the Commissioner of Police, Gurugram in this regard to address his ulterior motives.

- 2.6 It is worthwhile to mention herein that the applicant is not paying the maintenance charges regularly and the instant application is the counterblast to the arrears of maintenance charges.

**C. Application is in contravention to the directions issued by the Apex Court**

- 2.7 The Hon'ble Supreme Court of India in **Bhupinder Singh vs. Unitech Ltd being Civil Appeal No. 10856 of 2016** vide order dated 20.01.2020 has set up a new Board (as proposed by the Union Government) to look into the affairs of Unitech Limited (holding company of respondent no.1) and its subsidiaries and accordingly as per the said Order, the erstwhile management of Unitech Limited and its affiliates was superseded and a new Board of Directors was constituted under the chairmanship of Mr. Yudhvir Singh Malik, IAS (Retd.), formerly Secretary to Government of India (Chairman & Managing Director), (a) Shri Anoop Kumar Mittal; (b) Ms. Renu Sud Karnad; (c) Shri Jitu Virwani; (d) Shri Niranjan Hiranandani; (e) Dr Girish Kumar Ahuja; and (f) Shri B Sriram.
- 2.8 It is pertinent to mention that vide the abovementioned order, the Hon'ble Supreme Court of India has directed that there shall be a 'moratorium' in cases of Unitech and its subsidiaries.
- 2.9 Further, it is pertinent to mention that, the Hon'ble Supreme Court vide an Order dated 20.01.2020, while passing an appropriate direction was pleased to grant immunity to the newly appointed Board of Directors in respect of the numerous litigations pending all over India in relation to the Company and its promoters, management, etc.
- 2.10 That, in the instant application, Mr. Yudhvir Singh Malik, has been arrayed as respondent No. 1 by the applicant, and to proceed against him will be against the spirit of the Order dated 20.01.2020 passed by the Hon'ble Supreme Court.

**D. Order dated 30.10.2020 is against the basic principles of natural justice**

2.11 The order dated 30.10.2020 has been passed in grave violation of the principles of natural justice “Audi Alteram Partem”, i.e., no one should be condemned unheard. The Ld. Forum, without affording an opportunity of hearing to the respondent No.1, proceeded to decide the complaint filed by the applicant vide the order dated 30.10.2020. It is humbly submitted that the “Audi Alteram Partem” doctrine gives a right that one shall not be condemned of anything without being heard. It is based on the principles of natural justice and ensures a just and fair hearing. In **Harbans Lal v Commissioner, National Co-operative Bank v. Ajay Kumar and Fateh Singh v State of Rajasthan**, A.I.R. 1994 S.C. 39, it was held by the Hon’ble Supreme Court that if a person gets a reasonable opportunity of being heard or fair hearing it is an essential ingredient of the principal of audi alteram partem. This condition is accompanied by the authority providing written or oral hearing which is discretion of the authority, unless the statute under which action is taken by the authority provides otherwise. It is the duty of authority to ensure that affected parties should get a chance of oral or personal hearing or not. In the instant case, this rule was not applied by the Ld. Forum.

2.12 Thus, in view of abovementioned submissions the impugned order is liable to be set aside on this short ground alone.

**3. Reply from Respondent No.3,4 and 6, Dated: 23.08.2021:**

The present petition seeking initiation of contempt proceedings against the answering respondents is not maintainable based on the following grounds:

3.1 In compliance of the CGRF Order, the answering respondents through SDO (OP) Sub Division DHBVN Sohna Road have already issued notices to the builder RWA vide letters dated 30.10.2020, 09.11.2020, 31.03.2021 and 02.06.2021 to ensure the compliance of the order issued by CGRF. By way of these notices, the builder RWA was called upon by the licensee to comply with the CGRF Order at the earliest possible. However, despite repeated notices, no response whatsoever has been received from the builder.

- 3.2 In this regard, the officers of the answering respondent had visited the Society premises on 12.08.2021 and checked the individual meters of some of the residents. It was found that the dual meter installed in the Society are not tested by the respondent's lab and that two separate bills were now being issued to the residents for electricity supply and for D.G. CAM charges.
- 3.4 It is submitted that the provisions regarding billing of individual consumers as contained in HERC Single Point Supply Regulations 2020 and also in DHBVN sales circular D-17/2020 at point no. 6.6 is reproduced as under:-
- “(a) The Employer/GHS/Users Associations will not charge the Residents/Individual Consumer, Common Services and other category loads in the Colony/GHS/ Complex for electricity supplied, at a rate higher than the tariff for Domestic Supply (DS)/other relevant category, approved by the Commission from time to time.
- (b) In case any Employer /GHS/Users Association charge the individual consumers with in its complex for electricity supplied at rates higher than the Domestic supply tariff/ other relevant category tariff (as per usage of electricity) approved by the Commission, the aggrieved Residents/Members shall have the right to jointly file a complaint against such GHS/Employer/Users Associations before the CGRF/Ombudsman as per these Regulations for redressal of their grievances.”
- 3.5 Pertinently, no specific procedure has been defined in the regulations to enforce the decision of CGRF in such cases. The answering respondents have not been bestowed with any power or obligation under the regulations to get the CGRF directions implemented.
- 3.6 In this regard, reliance is placed on the case of **Aligarh Municipal Board & Ors. v. Ekka Tonga Mazdoor Union & Ors. (1970) 3 SCC 98**, where the Hon'ble Supreme Court observed that if a Corporation prevents compliance or fails to take appropriate action, within its power for the performance of the duty of obeying those orders after being apprised of the order, the corporation is to be held responsible for disobedience and may be punished for contempt.

3.7 Therefore, in view of all these facts and circumstances, it is submitted that the answering respondents are wrongly impleaded as a party in this petition under Section 142 r/w Section 146 of the Act for non-compliance of CGRF order and the same is not maintainable against the answering respondents. Therefore, this Hon'ble Commission is beseeched to issue appropriate order as deemed fit.

**4. PROCEEDINGS:**

4.1. The case was heard by the Commission on 02.06.2021 as scheduled through video conferencing in view of Covid-19 Pandemic.

4.2. At the outset, Sh. Abhinav Sood, appeared for the respondent no.1 and submitted that their client office at Gurugram is presently under lockdown and sought time for filing the reply and requested to adjourn the matter till July, 2021. Similar requests were also made by Sh. Sameer Malik, Advocate appearing on behalf of the respondents no. 3, 4 & 6 and sought time for filing their reply. The petitioner submitted that all the respondents be directed to file the reply with an advance copy to the petitioner. The Commission, acceding to the request of the respondents and petitioner, directed the respondent to file their reply within two weeks' time with an advance copy to the petitioner.

**5. COMMISSION ANALYSIS AND ORDER:**

5.1 At the outset the petitioner, Naresh Kumar Jindal, reiterated the contents of the petition and submitted his prayer before the Commission.

5.2 The counsel for respondent no. 1 submitted that they were not served any notice to appear before the CGRF as they were not party in the same. They were not heard by CGRF before passing order which is against the principles of natural justice.

5.3 While perusing the reply submitted by DHBVN, the Commission took note of the submission that "no specific procedure has been defined in the regulations to enforce the decision of CGRF in such cases. The answering respondents have not been bestowed with any power or obligation under the regulations to get the CGRF directions implemented", which implied that DHBVN has no obligation to implement the orders of CGRF! The

counsel for the respondent DHBVN in this context submitted that no specific procedure has been defined in regulations to enforce decision of CGRF and submitted that a number of notices were issued to Unitech Private Ltd to attend meeting and all efforts were made to resolve the issue.

The Commission took serious note of the averments made by DHBVN and stated that action is required to be taken as per Electricity Act, 2003 and enabling provisions. MD, DHBVN is advised to brief his officials accordingly. Further as per Clause 5.3 of HERC (Single Point Supply) Regulations, 2020, the individual consumers in the GHS where Single Point Supply has been provided shall be treated at par with the consumers of the distribution licensees and shall have the same rights and obligations as that of other consumers of distribution licensee. These consumers shall also be covered under all other relevant regulations of the Commission including CGRF and Ombudsman Regulations, and tariff order issued by the Commission, provided that in case of the provisions of section 126, 135 and 138 of the Act, the distribution licensee shall be authorized to take necessary action as per the provisions of the Act in coordination with such GHS/ RWAs. Further, in case of any difficulty in implementation of regulations, the licensee may approach the Commission with suggestions through a petition.

- 5.4 As per clause 2.41 of HERC (Forum and Ombudsman) Regulations, 2020, the decisions of the Forum will be recorded duly supported by reasons. The Order of the Forum will be communicated to the complainant, licensee and the concerned Dispute Settlement Committee, if applicable, in writing within 7 days of the passing of the order. The licensee shall comply with the order of the Forum within 21 days from the date of receipt of the order. In appropriate cases, considering the nature of the case, the Forum, upon the request of the licensee, may extend the period for compliance of its order up to a maximum of three months. In case of non-compliance of the order of the Forum or that of a Dispute Settlement Committee, the aggrieved consumer may approach the Commission which will provide the consumer as well as the Licensee an opportunity of being heard. The Commission may initiate proceedings under section 142 of the Act for violation of the regulations framed by the Commission.

- 5.5 The Commission agrees with the submission that there was no appearance of respondent no. 1, Unitech Reality Pvt. Limited, before CGRF as he was not made a party in the complaint, which was otherwise indispensable to resolve the grievance of the petitioner and notice/direction was only issued to SDO 'OP' and nodal officer for hearing/implementation of orders. The CGRF did not follow the procedure in terms of spirit of law where it was necessary to make respondent no. 1 party in the matter.
- 5.6 The CGRF may conduct an on-ground visit to the society in question for the first-hand information to determine the actual status of the same.
- 5.7 In view of the aforesaid facts and circumstances, the Commission decides to remand the matter to CGRF, Gurugram. The Commission further directs the CGRF to hear the parties on 06.09.2021 and pass afresh orders after hearing both the parties.
- 5.8 The present petition is disposed of in the above terms.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 31/08/2021.

**Date: 31.08.2021**  
**Place: Panchkula**

**(Naresh Sardana)**  
**Member**

**(Pravindra Singh)**  
**Member**

**(R.K. Pachnanda)**  
**Chairman**