

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO – 5 of 2017

DATE OF HEARING : 06.10.2021

DATE OF ORDER : 19.10.2021

IN THE MATTER OF:

Petition/Application/Complaint under section 142 read with 129 of Electricity Act read with Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum of Redressal for Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016 for Handing Over Taking Over (HOTO) of the entire electricity infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon.

PETITIONER

Shri Sudhir Aggarwal, Secretary, Raisina Aravali Retreat Residents Welfare Association, R/o G 5B, Ansals Aravali, Village Raisina, Tehsil Sohna, District Gurgaon.

V/s

RESPONDENT

Dakshin Haryana Bijli Vitran Nigam, Hisar

PRESENT

On behalf of the petitioner:

Sh. Kuldeep Kohli, Advocate

On behalf of the respondent:

Dr. Yash Garg, Deputy Commissioner,
Gurugram.

Sh. Manuj Kaushik , Advocate for respondent
DHBVN

QUORUM

**Shri R.K. Pachnanda, Chairman
Shri Naresh Sardana, Member**

ORDER

1. Brief background of the Case:

1.1. The main excerpts of the petition is as under:

- I. M/s Ansals Properties Infrastructure Ltd. as a developer of Ansals Aravali Retreat after obtaining the necessary approvals from the Government of Haryana had developed the entire area of 1200 Acres. Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon is a property wherein there are 218 farms of 2 Acres and 457 farms of one acre in all 675 farms which were sold to different people from time to time since 1992.
- II. The association of the applicant had got the electrification plan approved/sanctioned vide letter No. 2794 dated 05/04/1991 by the erstwhile Haryana State Electricity Board. The sanctioned electrification layout scheme as per the electricity load was duly signed/approved right from the level of SDO/AEE, XEN, SE and finally the Engineer in Chief, of the erstwhile Board i.e. HSEB and specifies the cable routing and the sub stations locations as well.
- III. The estimated electricity load as per the sanctioned electrification scheme was based on the load norms as per recommended load per farm by the SDO in the entire colony.
- IV. The promoters of the complex installed the sub stations with the recommendations of the officers of the erstwhile HSEB. After the satisfactory inspections, the sub stations were energized for the supply of electricity to the owners of the farm houses who applied for the connections.
- V. As the colony started getting inhabited, Ansals requested the erstwhile HSEB for approval of the (1) Overhead HT systems within the colony and (ii) routing of HT feeder from grid station to the colony so that colony could be energized.
- VI. The entire infrastructure was installed by the Ansals as per the approved electrification scheme in its colony which is capable of bearing the desired load. The substations along with feeder network was inspected and duly certified by the concerned authorities before granting the permission to energize each and every substation.
- VII. Based on the requirement of the scheme, one 11 kV feeder was provided from the Tikli feeder upto Ansals Aravali Retreat entrance Gate No. I and

the entire infrastructure including high tension wire, whether underground or overhead and the poles were all provided by promoters of the complex. The erstwhile HSEB had only placed a two pole structure at the entrance of Gate no. 1. Even the internal infrastructure inside the complex of Ansals Aravali Retreat including the entire electrical installation i.e. 7 Transformers of 315 KVA, approximately 1200 electrical poles in the entire area, the overhead High Tension wires and low tension wires in the entire area measuring around 1200 acres and the lights on the streets were provided by the promoters of the complex.

- VIII. In the meantime, the Haryana Electricity Reform Act 1997 was passed by the State of Haryana and simultaneously on the 14th of August 1998, Haryana State Electricity Board was divided into two parts, namely, Haryana Power Generation Corporation Limited (HPGCL) and Haryana Vidyut Prasaran Nigam Limited (HVPNL). HVPNL holds the Business License issued by the Regulatory Commission (HERC) for Transmission & Bulk supply of Power in Haryana. HVPNL was, on the other hand, entrusted with the power transmission and distribution functions. Further, Distribution functions was taken away from HVPNL and was handed over to newly created DISCOMs i.e., UHBVN & DHBVN. DHBVN is responsible for distribution of electricity in the South Haryana.
- IX. As per Section 42 of the Electricity Act, 2003 the entire electrical installation and the connected infrastructure, has to be developed and maintained by the distribution licensee as it is its duty to maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.
- X. In accordance with the above provisions and also the fact that the power is being supplied and revenue being collected by the DHBVN i.e. the Distribution Licensee from the residents, the petitioner/applicant made several representations and requisitions to the DHBVN to take over the infrastructure relating to power/electricity from the developer and maintain the same, the same has not been taken over by the Licensee DHBVN till date.
- XI. Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon has 675 farms which were sold in the year 1992 onwards and since then DHBVN has provided around 300 connections and gets an approximate

revenue of Rs. 10 lakhs every month from the said connections. Apart from this there are about 1200 electrical poles in the area and the minimum bill from these pole connections comes to Rs. 50,000 per month. The total revenue being earned by the DHBVN per annum from the Ansal Retreat comes to Rs. 1.80 Crores approximately.

- XII. DHBVN has since then been installing connections and even providing connections to villages outside Ansals Aravali Retreat for which connection is being taken from the feeders of the Retreat. Hence it is submitted that though the revenue goes to DHBVN directly for all the connections provided at Ansal Aravali Retreat and also from the street lights installed in the entire area but the entire burden of maintaining and developing the infrastructure falls on the consumers.
- XIII. The infrastructure comprising of HT installation, the servicing and maintenance has to be carried out by a certified class - I contractor, a facility not easily available in the hands of the residents.
- XIV. The electric connections and transformers etc. are the property of the DHBVN and should be taken over by them immediately. A period of 25 years has lapsed already and DHBVN has been readily collecting revenue from the farm land owners as per details given above but has not been maintaining the infrastructure which should have been taken over by them long back.
- XV. Since the electrical infrastructure within the colony has been installed/laid with due certification of load bearing capacity and are based on the certificates of worthiness issued by the electricity department, it is their responsibility and duty to develop it further and maintain the same.
- XVI. During the petitioner's /applicant's discussions with the officers of the department, it was concluded that the genesis of the refusal of the DHBVN to take over the infrastructure is the lack of man power to maintain it.
- XVII. In 1992, one 11 kV feeder was provided from the Tikli Feeder up to Ansals Aravali Retreat entrance gate No.1. The said feeder was provided directly from the Tikli Rural Feeder. However, during the last 25 years, many adjoining villages like Akhlimpur, Tikli, Gairatpur Bas, Kheda, Pandala etc. have been granted connections from the said Tikli Rural Feeder and all these villages are consuming electricity from the said feeder resulting in the fact that the load reaching Ansals Aravali Retreat is much less and

hence the residents are being deprived of the provision of proper and undisturbed electricity in spite of paying the full amount.

- XVIII. Ansals Aravali Retreat is not a rural area but still the electricity being provided since 1992, being transmitted from the Tikli Rural Feeder, does not get electricity for more than 10 hours in a day depriving the elderly people staying in the area, of electricity. During the summer period every year, the load requirement suddenly increases many fold and the elderly people staying in the area suffer heavily because of the power being given for only 10 hours out of 24 hours and secondly the power that is being given is not sufficient to meet the need of the residents.
- XIX. DHBVN is the sole distribution licensee for supply/distribution of electricity in Gurgaon including the area where the petitioners/applicants are staying at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna and it also has a monopoly in the matter of supply/distribution of electricity in the area.

1.2. In view of above, the petitioner has prayed as follows:

“

- a) *Direct DHBVN being the distribution licensee, to develop and maintain an efficient and coordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the Act and to immediately take over the electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurgaon.*
- b) *Direct DHBVN to kindly provide a regular feeder to the entire Ansals Aravali Retreat rather than providing a Rural Feeder so that the supply of electricity could be provided to the residents 24 hours.*
- c) *Direct DHBVN to provide the requisite load in view of the power being provided to various villages enroute to Ansals Aravali Retreat.”*

2. Reply dated 01.10.2018 from respondent i.e. DHBVN:

The main contents of the reply are as under:

- 2.1 The respondent has submitted that the petitioner has no *locus standi* to file the present petition. The petitioner is not authorized to represent the residents of Ansal Aravali Retreat in view of the Order dated 20/03/2017 of

the State Registrar, Chandigarh. The relevant extract of the said Order is as follows:

“That without doing any social as well as welfare work, the respondent No. 3 (Raisina Aravali Retreat Residents Welfare Association) when realized that the respondent No. 2 (Ansal Retreat Residents Welfare Association) is well organized and maintaining the entire farm land of Ansal Aravali Retreat , with better security and up-keep and demanding maintenance from the property owners of the farm land the respondent No. 3 (Raisina Aravali Retreat Residents Welfare Association) founder members started creating trouble so that they do not have to pay maintenance charges to respondent No. 2 and the earlier dues of the Licensee Company. Further, they want to grab the power by hook or crook and started all kind of allegation against respondent No. 2 (Ansal Retreat Residents Welfare Association)”.

- 2.2 An agreement dated 10/04/2015 has been executed between Ansal API and Ansal Retreat RWA whereby entire management and maintenance of the Society was transferred to Ansal Retreat RWA.

3. Written Arguments dated: 08.06.2019 by petitioner:

- 3.1 That the petitioner wishes to reiterate that the arguments that are being presented by the respondents are misleading, false, deceptive with the sole intention of misleading the Hon'ble Commissioner and with the intention of not fulfilling their duty, shirking away from their responsibilities, as a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in their area of supply as they are required to do under section 42 of the Electricity Act, 2003 and hence are not sustainable at all.
- 3.2 That the respondents are not advocating their matter with Act and the Fact but with tact to deceive the Hon'ble Commission.
- 3.3 That the respondents are blaming the Consumer for their failures instead of owning the same. That the Hon'ble Commission is requested to kindly critically look into each argument and the details being provided by the respondent as the same are wrong and factually incorrect and are being provided to mislead the Hon'ble Commission with the sole intention of

shirking from the responsibilities which they are required to fulfil as per the Electricity Act, 2003, towards a consumer.

- 3.4 That it is the responsibility of the lawyer of the respondent to advise his client to use tactics that are legal, honest and respectful of courts and tribunals. A lawyer shall act with integrity and professionalism, maintaining his or her overarching responsibility to ensure civil conduct. A lawyer's duty to the court relates to his or her status as a professional who serves, not only clients, but also the public interest. Rather, it is a lawyer's duty to the court which should take priority over the interests of the client. Without such limits being adequately defined and respected, the profession risks an ethical race to the bottom.
- 3.5 That the respondent is not entitled to obtain an equitable remedy because the respondent is acting unethically and has acted in bad faith with respect to the subject of the complaint that is, with "unclean hands".

PETITIONER IS A CONSUMER AS PER THE ELECTRICITY ACT 2003

- 3.6 That the definition of a consumer as per the Electricity Act, 2003 is as under: "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be"
- 3.7 As per the above definition of a consumer, each person who is supplied with electricity for his own use by a licensee is a consumer hence all the persons who have filed this complaint under the banner of an Association are individual consumers.

IS IT THE DUTY OF THE DISTRIBUTION LICENSEE TO DEVELOP AND MAINTAIN AN EFFICIENT, COORDINATED AND ECONOMICAL DISTRIBUTION SYSTEM IN HIS AREA OF SUPPLY:

- 3.8 Section 42 (duties of distribution licensee and open access)
It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of

supply and to supply electricity in accordance with the provisions contained in this Act.”

- 3.9 That, since the electricity connection has been given to each individual and electricity is being supplied to each individual and individual bills are being raised and money being collected from each individual hence as per Section 42 above, it shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.”

NON-FURNISHING OF INFORMATION INSPITE OF REPEATED ORDERS OF THE HONOURABLE COMMISSION:

- 3.10 In the said matter, the Hon’ble Commission had issued an Order dated 4.10.2018 wherein DHBVN was ordered to provide the information as under: “ On query regarding the electrification plan approved by the licensee at the first instance, correspondence regarding inadequate infrastructure, if any, at the time of energization of existing system or thereafter, regulatory provisions in this regard and status of new connections released in the area during the last one year along with the charges recovered thereof, Advocate Shri Ruheel Kohli requested for two weeks’ time for reporting of existing electric infrastructure in the area along with inadequacy, if any, in addition to the queries as raised by the Commission.”

The information had to be provided within two weeks by DHBVN Limited but unfortunately the same has not been provided till date by the concerned officers of the DHBVN Limited, for reasons best known to them.

- 3.11 Again on 15.4.2019, the Hon’ble Commission had issued an Order wherein DHBVN was ordered to provide the information as under:

Further, the Commission directs the respondent to submit complete chronology of conversion from original electrification plan to as on date, reasons for providing commercial connections when original electrification plan did not have any commercial establishment, total load as on date and detailed replies to the petition. Also, the respondent shall submit the reasons of not taking over & maintaining the electrical infrastructure up to the meter, where the connections have been directly released by the respondent.”

This information has also not been provided till date as a copy of the same had to be provided to the petitioner as well.

NON FURNISHING OF REPLY AND WRITTEN SUBMISSIONS IN RESPONSE TO THE PETITION BY THE RESPONDENT INSPITE OF THE ORDERS OF THE HONOURABLE COMMISSION:

3.12 In the said matter, the Hon'ble Commission had issued an Order dated 4.10.2018 wherein DHBVN was ordered to provide the Reply and Written submissions within 15 days but the said order has not been complied with even till date.

3.13 That a letter was also issued to the Chairman, Managing Director, XEN & SDO of DHBVN to this respect but the same has also not been replied to even till date.

MISLEADING STATEMENTS BY THE RESPONDENTS/ THEIR REPRESENTATIVES BEFORE THE HONOURABLE COMMISSION:

3.14 That during the arguments before the Hon'ble Commission, the SDO, DHVBN, Badshahpur made a statement that the actual demand of Power would be 40 KW per farm and if there are 600 farms the demand would be 24000 KW and the existing infra structure cannot take so much of load and hence the same needs to be upgraded.

3.15 That it appears the said statement was made by the SDO, DHVBN, Badshahpur based on the following paras from the Sales Manual of DHVBN for grant of connections:

Load norms for sector/ colonies developed by HUDA/ Private Colonies.

Sr. No.	Size of plot.	Connected load.
1.	Below 220 Sq. meter.	16 kW
2.	From 220 to 285 Sq. meter.	20 kW
3.	From 286 to 419 Sq. meter.	25 kW
4.	From 420 to 650 Sq. meter.	30 kW
5.	Above 650 Sq. meter.	40 kW

3.16 That the above said statement was made by the SDO, DHVBN, Badshahpur, without application of mind at all and without having gone through the details of the connections given so far, the connected load, the type of meter

etc. and the statement was made only to mislead the Hon'ble Commission by giving wrong and inflated figures to the tune of more than ten to 15 times of the actual demand in the area and more than 20 times of the actual consumption in the area.

- 3.17 That the load norms mentioned in Para 15 copied from the Sales Manual are only for sector/ colonies developed by HUDA/ Private Colonies and not for the agriculture farms wherein the buyers have not asked for more than 6 KW in last more than 25 years except for few who have been granted more load illegally by the DHBVN, Badshahpur.
- 3.18 That I have obtained copies of more than 100 bills for the connections given at Ansals Aravali Retreat from the website of DHBVN and in all the cases but for few the load sanctioned is 6 KW.
- 3.19 That I have another more than 70 bills with me wherein the sanctioned load is only 6 KW and not 40 KW as claimed by the SDO, DHBVN, Badshahpur before the Honourable Commission on the date of hearing i.e. 5.4.2019.
- 3.20 That till now, as we understand, only 250 to 300 connections have been provided by the office of DHBVN, Badshahpur to the owners of the farm houses at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna with an average of 6 KW connected load.
- 3.21 That this makes a total of 1500 TO 1800 KW of connected load, though most of the land owners do not use this load, for the connections to the consumers, apart from the electricity provided for the .

FURTHER MISLEADING STATEMENT SAYING ELECTRIFICATION SCHEME WAS NOT APPROVED BY THE ELECTRICAL INSPECTORATE, HARYANA.

- 3.22 That the respondent told a lie before the Hon'ble Commission that the electrification scheme of the Ansals Aravali Retreat was never approved by the Government of Haryana, in spite of the fact that the petitioner had enclosed all the copies of the approvals by the Electrical Inspectorate, Haryana.
- 3.23 That it is further submitted that since the electrical infrastructure within the colony has been installed/ laid with due certification of load bearing capacity and are based on the certificates of worthiness issued by the electricity department, it is their responsibility and duty to develop it further and maintain the same.

3.24 That we are enclosing herewith the following documents to prove that the entire infrastructure relating to Aravali Retreat Electrification was laid with the approval of the offices of the Haryana State Electricity Board right from the level of SDO to XEN to SE. These documents have been procured under RTI:

- (i) Letter of Approval of HT Line dated 1.8.1991
- (ii) Letter of Inspection of Transformer & HT Line dated 8.4.1991
- (iii) Electrification Schemes & its approvals dated 6.7.1990 /28.10.1991
- (iv) Dates of grant of 31 Electrical connections before May 1992

3.25 That in 1992 one 11 KV feeder at a cost of more than 34.25 lacs was provided with the approval of the HSEB, Gurugram as per above documents enclosed from the Tikli Feeder up to Ansals Aravali Retreat entrance gate No.1. The said feeder was provided directly from the Tikli Rural Feeder. However, during the last 27 years, many adjoining villages like Akhlimpur, Tikli, Gairatpur Bas, Kheda, Pandala etc. have been granted connection from the said Tikli Rural Feeder. All these villages are consuming electricity from the said feeder which was laid by Ansals and hence the very use by HSEB of the infrastructure laid by Ansals, implies that the infrastructure has been taken over by them. This is also resulting to the effect that the load reaching Ansals Aravali Retreat is much less and hence the residents are being deprived of the provision of proper and undisturbed electricity in spite of the residents paying the their electricity charges for last 27 years.

WHAT WAS THE PROJECT AND THE HIGH HANDEDNESS OF DHVBN, BADSHAHPUR IN GRANTING LOAD/ GRANTING CONNECTIONS AT THEIR WHIMS AND FANCIES FOR HF OR SP.

3.26 That since the entire scheme was for the developments of the agricultural farms, the connections so provided should have been for Horticulture whereas DHVBN has been giving connections for Small Power (SP) at their whims and fancies based on “Show me the face and I will tell u the Rule” and to some for Horticulture though there is no horticulture activity going on in that farm.

3.27 That the charges for Horticulture are 0.25 Ps per Unit whereas those for SP are Rs. 6.40 per Unit.

- 3.28 That most of the owners are paying Rs. 6.40 per Unit and have been given SP connection.
- 3.29 That in spite of paying for the SP charges for an agricultural farm land project, where the charges should have been paid for HF connection, the DHVBN, Badshahpur is not providing the maintenance and servicing to the consumers, which they are bound to as per the law.

WHAT IS HORTICULTURE/AGRICULTURE AS PER THE LAW AND WHAT ALL CONSTRUCTION IS PERMISSIBLE ON THE AGRICULTURAL LAND AND HOW CONSUMERS ARE BEING MADE TO SUFFER DSOUBLE LOSS OF MUCH HIGHER CHARGES AND NO MAINTENANCE & SERVICE.

- 3.30 That as per Section 2 (1) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 Act, Agriculture is defined as under:

"Agriculture" includes horticulture, dairy farming, poultry farming and the planting and upkeep of an orchard"

- 3.31 That Section 6 of Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 reads as under:

Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director.

Provided that no such permission shall be necessary for erection or re erection of any building if such building is used or is to be used for agricultural purposes or purposes subservient to agriculture.

- 3.32 Hence agriculture/ horticulture and the construction so required to carry on the horticulture activity which is termed as subservient to agriculture is permissible on the agriculture land.

MISLEADING FACTS THAT THE ELECTRICAL INFRASTRUCTURE NOW BELONGS TO ANSALS RETREAT RESIDENTS WELFARE ASSOCIATION (ARRWA) AS THE MAINTENANCE HAS BEEN HANDED OVER TO ANSALS ARAVALI RETREAT BY ANSAL PROPERTIES & INFRASTRUCTURE LIMITED

3.33 That the Associations are formed under Haryana Regulation & Registration of Societies, Act 2012 and Haryana Regulation & Registration of Societies Rules 2012 and hence their operation has to be as per the HRRS Act/Rules 2012.

3.34 **That under Section 42 of the HRRS Act, 2012 all property movable and immovable vests** in the members or their successor-in-interest who have contributed for the acquisition of such property. Section 42 of the HRRS Act 2012 reads as under:

“ All property, movable and immovable, belonging to a society, whether acquired before or after its registration, if not vested in the trustees, shall vest in the Society, and any such property may be referred to as the property of such Society in any legal proceedings:

Provided that in case a Society is registered for the purposes of the Haryana Apartment Ownership Act, 1983 (Act 10 of 1983), a housing society or a resident welfare association registered as a Society for the operation, management and maintenance of facilities for the residents or civic amenities of any defined area, the property may vest in the members or their successor-in-interest who have contributed for acquisition of such property.”

3.35 That what is an immovable property is defined in different Acts as under:

The Term “Immovable Property” occurs in various Central Acts which define this term. The most important act which deals with immovable property is the Transfer of Property Act (T. P. Act).

B. Definition of Property:

- i. According to Section 3 of that Act, “Immovable Property” does not include standing timber, growing crops or grass. Thus, the term is defined in the Act by excluding certain things. “Buildings” constitute immovable property and machinery, if embedded in the building for the beneficial use thereof, must be deemed to be a part of the building and the land on which the building is situated;
- ii. As per Section 3(26) of the General Clauses Act 1897, “immovable property” “shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth”.
- iii. Section 2(6) of The Registration Act, 1908 defines “Immovable Property” as under:

“Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass”.

- 3.36 That the above definition clearly means that the pipes which were embedded to a strong cemented structure is included in the definition of immovable property.
- 3.37 That any immovable property in the entire complex is the undivided common property of all the owners and absolutely beyond the jurisdiction of any Resident Welfare Association to be even touched without the permission of each and every owner, not to make a mention of having any control on that and more specifically the electrical infrastructure which requires to be maintained and serviced by the DHVBN under the Electricity Act, 2003.
- 3.38 That the Association therefore cannot claim a right over the electrical infrastructure which belongs to the owners as per the HRRS Act/Rules 2012.

MAINTENANCE AND SERVICING OF THE INFRASTRUCTURE BY QUALIFIED STAFF:

- 3.39 That it is needless to say that the infrastructure comprises of HT installation, L T Installations, Electric Poles, Transformers etc. and the servicing and maintenance of the same has to be carried out by a certified class - I contractor, a facility not at all easily available in the hands of the resident or the RWAs.
- 3.40 That the maintenance of the electrical infrastructure by an RWA is absolutely illegal and that too when they do not have any qualified staff to maintain the same which is a must, as an infrastructure with HT/LT lines cannot be maintained by any electrician who is not qualified to do so and is illegal.**
- 3.41 That it is submitted that because of very heavy wind lot many poles and the electric wires get dismantled and fallen. In absence of availability of certified Class I Maintenance Staff with the Residents Welfare Association and with the DHVBN not taking over and maintaining the distribution system, the situation gets quite dangerous to handle as this could lead to some untoward incident in the near future.**

- 3.42 That it is submitted that the electric connections and transformers etc. are the property of the DHBVN and should be taken over by them immediately. A period of 25 years has lapsed already and DHBVN has been readily collecting revenue from the farm land owners as per details given above but has not been maintaining the infrastructure which should have been taken over by them long back.
- 3.43 That it is further submitted that since the electrical infrastructure within the colony has been installed/ laid with due certification of load bearing capacity and are based on the certificates of worthiness issued by the electricity department, it is their responsibility and duty to develop it further and maintain the same.
- 3.44 That it is important to note that during the petitioner's /applicant's discussions with the officers of the department, it was concluded that the genesis of the refusal of the DHBVN to take over the infrastructure is the lack of man power to maintain it. It is submitted that such a reason is totally baseless and cannot be made the basis for not dispensing a statutory duty which has been imposed by a statute.
- 3.45 That it is further submitted that though Ansals Aravali Retreat is not a rural area, still the electricity being provided since 1992 being transmitted from the Tikli Rural Feeder does not get electricity for more than 10 hours in a day depriving the elderly people staying in the area of electricity.
- 3.46 . That it may kindly be noted that during the summer period every year, the load requirement suddenly increases many fold and the elderly people staying in the area suffer heavily because of the power being given for only 10 hours out of 24 hours and secondly the power that is being given is not sufficient to meet the need of the residents.
- 3.47 That in spite of our regular meetings with SDO/Op Sub Division, DHBVN, Badshahpur, Gurgaon and Shri Manoj Yadav, Xen Sub-Urban Division, DHBVN, Gurgaon requesting them to take over the maintenance of the entire infrastructure at Ansals Aravali Retreat and help in mitigating the other stated problems of the residents, the same is of no avail.
- 3.48 That the verbal response and utterances of the officers of DHBVN and their inaction in even responding to our communications is arbitrary, unjustified and against the principal of natural justice and cannons of jurisprudence and also contrary to the provisions of the Act, Rules and Regulations of the Electricity Commission.

- 3.49 That DHBVN is the sole distribution licensee for supply/distribution of electricity in Gurgaon including the area where the petitioners/applicants are staying at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna and it also has a monopoly in the matter of supply/distribution of electricity in the area.
- 3.50 That we as residents of the area are statutorily dependent on DHBVN for supply and distribution of electricity and DHBVN being the Distribution Licensee is statutorily liable to provide the residents electricity and also to maintain the same.
- 3.51 That taking undue and unfair advantage of the vulnerable position of the residents and its own position of dominance and monopoly in the matter of supply/distribution of electricity, DHBVN is not taking over the maintenance of the electrical infrastructure or paying heed to the other grievances of the petitioner/applicant, in spite of the law being unambiguous on this issue.
- 3.52 That it is submitted that under section 42 of the Electricity Act, 2003, it is the statutory obligation of DHBVN being the distribution licensee to develop and maintain an efficient and co-ordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the Act.

REPLY BY THE ARWA VIDE LETTER DATED 12.9.2017 CONFIRMING RWA IS ALSO INTERESTED IN HANDING OVER ENTIRE ELECTRICITY INFRASTRUCTURE TO DHVBN

- 3.53 That ARWA has already confirmed through their letter signed by the then Secretary as under:
- “The Governing Body have directed me to inform your good office these points and further our RWA is also interested in handing over entire electricity infrastructure to DHVBN.”

AFFIDAVIT WITH RESPECT TO BEARING THE COST OF UPGRADATION OF THE SYSTEM AND THE COST OF MAKING UP DEFICIENCY IF IT IS PAYABLE AS PER THE ELECTRICITY ACT, 2003.

- 3.54 The affidavit as ordered is enclosed.

DHVBN TAKES SHELTER UNDER A FIRE INCIDENCE AND DOES NOT PROVIDE ANY INFORMATION UNDER RTI OR OTHERWISE TAKING THE PLEA THAT ALL RECORDS WERE BURNT IN THE FIRE.

For any information that is asked for from DHVBN, Badshahpur, they do not provide any and give an answer that their entire records were burnt in a fire incidence.

3.55 That DHVBN, Badshahpur may kindly be advised to provide a list of what is available with them and what has been burnt in the fire.

3.56 It does not seem to be true that all their records were burnt in the fire.

3.57 It is therefore, respectfully prayed that Commission may be pleased to:

- I. Direct DHVBN being the distribution licensee, to develop and maintain an efficient and co-ordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the Act and to immediately take over the electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurgaon.
- II. Direct DHVBN to kindly provide a regular feeder to the entire Ansals Aravali Retreat rather than providing a Rural Feeder so that the supply of electricity could be provided to the residents 24 hours.
- III. Direct DHVBN to provide the requisite load in view of the power being provided to various villages enroute to Ansals Aravali Retreat.
- IV. As an interim relief direct DHVBN to start attending to the complaints of the residents of the area on top priority as the entire area gets too dark being on a hill top with no electrified colony around and hence gets immuned to thefts and robberies which has become a regular feature in that area.
- V. That DHVBN, Badshahpur may kindly be advised to provide a list of what records have been burnt in the fire incidence which took place in their office and what records are available with them.

4. Revised Reply dated 23.07.2019 from respondent i.e. DHVBN:

The major excerpts of the revised reply by respondent is as under:

- 4.1 That present reply is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limiter (hereinafter referred to as 'DHVBN') in the captioned petition in response to the issues raised with respect to development and maintenance of an efficient, coordinated and economical distribution system in its area for supply of electricity in accordance with the provisions of the Electricity Act, 2003 and also in terms of HERC (Guidelines for establishment

of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016 for handing over taking over (HOTO) of the entire electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon.

4.2 That the petitioner has invoked the jurisdiction of this Hon'ble Commission u/s 142 of Electricity Act, 2003 seeking following reliefs:

- I. Direct DHBVN being the distribution licensee, to develop and maintain an efficient and coordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the act and to immediately take over the electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil sohna, Gurgaon.
- II. Direct DHBVN to kindly provide a regular feeder to the entire Ansals Aravali Retreat rather than providing a Rural Feeder so that the supply of electricity could be provided to the residents 24 hours.
- III. Direct DHBVN to provide the requisite load in view of the power being provided to various villages enroute to Ansals Aravali Retreat.

4.3 That all submissions and allegations made by the petitioner are denied in their entirety and same may be treated as denial in seriatim. That the contents of the accompanying petition are denied and disputed in terms of the present reply. Nothing in the present reply be construed as an admission on the part of the answering respondent unless specifically admitted.

Preliminary Submissions: -

That the respondent craves leave of the Hon'ble Commission to make following preliminary submissions/objections: -

4.4 That primarily petitioner is raising the issue of taking over of the infrastructure relating to power/electricity from the developer and maintenance of the same by the respondent. In this regard, it is respectfully submitted that Ld. State Registrar, Chandigarh vide its order dated 20.03.2017 has declared Raisina Aravali Retreat Residents Welfare Association, Gurgaon ("RARRWA") as an illegal RWA with no moral rights to represent Ansal Aravali Retreat. The relevant paragraph of the order is reproduced below: -

3 (IX) “ That without doing any social as well as welfare work, the respondent No. 3 (Raisina Aravali Retreat Residents Welfare Association) when realized that the respondent No. 2 (Ansal Retreat Residents Welfare Association) is well organized and maintaining the entire farm land of Ansal Aravali Retreat , with better security and up-keep and demanding maintenance from the property owners of the farm land the respondent No. 3 (Raisina Aravali Retreat Residents Welfare Association) founder members started creating trouble so that they do not have to pay maintenance charges to respondent No. 2 and the earlier dues of the Licensee Company. Further, they want to grab the power by hook or crook and started all kind of allegation against respondent No. 2 (Ansal Retreat Residents Welfare Association)”.

- 4.5 That vide letter dated 12.03.2015 Ansal Retreat Residents Welfare Association (“**ARRWA**”) had approached Ansal Properties & Infrastructure Ltd. (“**API**”) for taking over maintenance of the Ansal Aravali Retreat and vide mutual agreement dated 10.04.2015 on handing-over and taking-over (“**HOTO**”) between API and ARRWA entire administration, management and control of maintenance has been transferred to ARRWA including electrical infrastructure. It is pertinent to state that the petitioner without having any valid authority and sanctity has approached the Hon’ble Commission. Hence, present petition is not maintainable and is liable to be dismissed on this ground alone.
- 4.6 It is respectfully submitted that above mentioned facts and circumstances clearly stipulates that the petitioner has not approached the Hon’ble Commission with clean hands and true facts. It is further submitted that as a rule of equity, as well as of law the present petition deserves to be dismissed on the grounds of “suppresio veri” and “suggestio falsi”.
- 4.7 That present petition is false, frivolous and vexatious in nature and same is filed with the intention to mislead the Hon’ble Commission. It is submitted that the petitioner being “Dolus” has filed the present petition with malice and without any legal justification. Hence, the present petition deserves to be dismissed on this ground alone.

4.8 Without prejudice to the above submissions, it is submitted that the respondent has analyzed the load requirement vis-à-vis the current infrastructure installed at the Ansal Aravali Retreat.

4.9 It is submitted that the current infrastructure installed at the Ansal Aravali Retreat was brought to the notice of the respondent vide letter dated 26.03.2018 issued by ARROWA. For ease of reference details of infrastructure as provided by the existing RWA i.e., ARROWA is reproduced hereunder: -

(a) Following are the details of electrical system:-

- (i) Transformers 315 KWA – 7 Nos.
- (ii) Transformers 25 KWA – 1 Nos.
- (iii) Transformers 63 KWA – 1 Nos.
- (iv) Transformers 200 KWA – 1 Nos.
- (v) LT Line Length – 38 Kms.
- (vi) HT Line Length – 24 Kms.
- (vii) 11 kV circuit switches – 4 Nos.

Pertinently, the above systems are 29 years old and the installed transformers and conductors due to increased load have become weak and unstable. Further, in terms of the aforesaid infrastructure existing infrastructure constitutes only for 2.5 MVA.

4.10 It is submitted that in order to ascertain the current load requirement and the inadequacy in the infrastructure, there are certain details which the Builder/Ansal Retreat Resident Welfare Association has to provide to the answering respondent. In this regard, the respondent has at various instances requested the Builder/Ansal Retreat Resident Welfare Association to provide the details including but not limited to letters dated 12.10.2018 and 14.03.2019. The details sought vide aforesaid letters are as under: -

- (a) Approved layout plan of the complete project, duly approved from DTCP/Government of Haryana or some other competent authority as the case may be.
- (b) Details of total farm houses with their FAR and plotted area.
- (c) Details of the occupied and constructed farm houses with their connected/sanctioned load and details of unoccupied/vacant farm houses.
- (d) Copy of the approved electrification plan duly approved by the competent authority of electricity dept., if any.
- (e) Copy of the sanctioned estimate of the electrical work already executed in the project if any.

(f) Capacity wise details of the already installed and energized transformer and their sanctioned estimates.

4.11 However, till date the above details have not been provided to the respondent. Therefore, in the absence of such details, it is not possible to ascertain the accurate load requirement and the corresponding system/infrastructure augmentation required.

4.12 Nevertheless, the respondent has prepared an analysis of the approximate load requirement and the inadequacy based on the limited information regarding the number of farmhouses and the area occupancy. The respondent has relied upon its sales circular No. D-16/2017 dated 12.04.2017 (which provides for electrical load norms in respect to different categories) to ascertain the load requirement and the corresponding system/infrastructure for which augmentation which would be required at Ansal Aravali Retreat. Pertinently, the load requirement provided in the prevailing sales circular is based upon size/category of residential plots and does not provide the load requirement of a farmhouse.

4.13 In this regard, Government of Haryana, Department of Town and Country Planning notified policy dated 30.05.2014 for planned development of low density eco-friendly colonies vide license under Act No. 8 of 1975 ('Policy'). The aforesaid policy provides planning parameters for individual farm plots as under:-

	Size of Plot	Main Building of the dwelling unit	Ancillary Building of main dwelling unit.
(a) site coverage [Ground Coverage & FAR)	1 acre to 2.499 acre	As applicable to residential plot equivalent to 300 sqm	1 percent of the farm and (not more than 40 percent of such ancillary building shall be used for labour / servant quarters).
	1.5 acre to 1.999 acres	As applicable to residential plot equivalent to 400 sqm	
	2 acres to 2.5 acres	As applicable to residential plot equivalent to 500 sqm	
(b) Height and Storey		12m height and three storey construction permitted.	4 meters, single storey.
(c) Basement		Basement shall be permitted to the maximum extent of building footprint but in the basement water closet and bathroom shall not be permitted.	
(d)	A uniform building shall be maintained across a farming plots and the zoned area for construction, which shall accordingly be fixed in the zoning plan.		

A policy dated 30.05.2014 issued by Department of Town and Country Planning is also relevant in the matter.

4.14 Pertinently, in view of the aforesaid policy r/w Sales Circular No. D-16/2017 dated 12.04.2017 (which provides for electrical load norms in respect to different categories), the farmhouse area and the corresponding load assessment as under: -

- (a) Admittedly, there are 675 Nos. of farmhouses of which:-
 - (i) 457 Nos. occupy 1 Acre of land; and
 - (ii) 218 Nos. occupy 2 Acres of land.
- (b) In terms of existing policy the effective area for load assessment would be:-
 - (i) 1 acre of plot = 300 sq. meters (equivalent to 12 marla);
 - (ii) 2 acre of plot = 500 sq. meters (equivalent to 1 kanal).
- (c) As per load norms, for an area of 1 acre and for an area of 2 acre required load requirement for each farm house would be:-
 - (i) For farmhouse of 1 Acre / 12 marla size = 250 KW; and;
 - (ii) For farmhouse of 2 Acre / 1 Kanal size = 30 KW.
- (d) If a demand factor of 0.40 is considered for residential plots or farm houses the load requirement for each farmhouse would be:-
 - (i) For farmhouse of 1 Acre / 12 marla size = 25 KW x 0.40 = 10 KW; and
 - (ii) For farmhouse of 2 Acre/1 Kanal size = 30 KW x 0.40 = 12 KW.
- (e) Therefore, the total load requirement for the aforesaid farmhouses would be:-
 $457 \times 10 + 218 \times 12 = 7,186 \text{ KW}$ (i.e., 8 MVA). Further, considering 80% loading position of the transformers, the actual capacity required would be 10 MVA.

4.15 As evident from the above, the infrastructure capacity currently installed at Ansal Aravali Retreat is only 2.5 MW against the required infrastructure of 10 MVA. It is submitted that there is acute inadequacy in the existing infrastructure capacity of about 7.5 MVA. Therefore, in order to cater the load a 33 kV sub-station has to be commissioned in Ansal Aravali Retreat.

4.16 Further, the tentative cost of implementing the above required infrastructure has been calculated in terms of the Sales Circular No. D-42/2014 as reproduced under:-

S. No.	Description	Amount
1.	Cost of GIS Sub-Station (33 x 11kv) including civil works but excluding cost to be provided by builder. (1 x 2.5 MVA, 33 x 11kv Transformer)	Rs. 2,27,23,701/-
2.	Cost of 33 kV line (approximate length 10 km. @ Rs. 53,63,031/-). The length may vary depending upon the connection point and the source sub-station.	Rs. 5,36,30,310/-
3.	Cost of internal infrastructure in case of system of 11kv (including LT network for plotted colonies) for inadequate infrastructure @ 7.5MVA x Rs.70,93,995/-.	Rs. 5,32,04,962/-
4.	Cost of 11kv (approximate length 5 km. @ Rs. 41,95,655/-) lines to be created from proposed 33 x 11kv sub-station.	Rs. 2,09,78,275/-
	Total Amount =	Rs. 15,05,37,248/- (Rupees Fifteen Crore Five Lac. Thirty-Seven Thousand Two Hundred and Forty-Eight Only.)

4.17 The above load assessment and tentative cost has been prepared considering the applicable load norms for agricultural / farm lands. In case RWA intends to use the farmhouses for residential/commercial or any other purpose then aforesaid load assessment and tentative cost may vary and there may be additional load requirement. Pertinently, in order to ascertain exact load assessment and cost to be incurred details and information shall be required from the petitioner.

Para wise Reply: -

That the respondent (“DHBVN”) now craves leave of the Hon’ble Commission to traverse the petition para-wise: -

4.18 That content of paragraph no. 1 of the petition is false and frivolous and hence denied. It is submitted that along with the alleged documents annexed, no proof of service that has been affected upon the respondent has been filed and petitioner must be put to strict proof of the same. It is pertinent to mention here that Ld. State Registrar, Chandigarh vide its order dated

20.03.2017 has already declared Raisina Aravali Retreat Residents Welfare Association, Gurgaon (“RARRWA”) as an illegal RWA with no moral rights to represent Ansal Aravali Retreat, Gurgaon. That the plaintiff relies upon the preliminary submissions made and same are not repeated herein for the sake of brevity.

- 4.19 That content of paragraph no. 2 of the petition needs no reply.
- 4.20 That content of paragraph no. 3 of the petition is false and baseless and hence denied. It is submitted that vide memo no. 2794 dated 05.04.1991 whereby permission to energize the transformer was accorded by erstwhile HSEB was given to M/s Delhi Towers Ltd., Aravali Retreat. It is evident from the letter dated 05.04.1991 that there was no approval of electrification plan. In fact, only the deposit estimate was approved. It is further noteworthy that the deposit estimate which was approved in the year 1991 was for agricultural purposes. The said estimate nowhere envisaged that the agricultural land would be converted to farmhouse. Therefore, the petitioner is wrong in contending that the any electrification plan was approved.
- 4.21 That content of paragraphs no. 4 to 16 does not call for any reply by the respondent same being matter of record. However, anything contrary to the records is denied. That plaintiff relies upon the preliminary submissions made and same are not repeated herein for the sake of brevity.
- 4.22 That contents of paragraph no. 17 of the petition are false, baseless and misconceived and hence denied except whatever is matter of record. That the body/RWA i.e, ‘RARRWA’ being represented thorough their Secretary, has no legal existence and rights as same being declared void and illegal by the Ld. State Registrar, Chandigarh. It is further submitted that any representation(s) or correspondence(s) as alleged by the petitioners made to the officials of the respondent Nigam are futile and ineffective and are denied in their entirety.
- 4.23 That content of paragraph no. 18 needs no reply same being matter of record. However, anything contrary to the record and data available with the respondent is denied.
- 4.24 That contents of paragraph no. 19 are misconceived and baseless and hence denied.
- 4.25 That content of paragraphs no. 20 to 31 does not call for any reply from the respondent. It is submitted that nothing in the present reply be construed as an admission on part of respondent unless specifically admitted. That the

respondent relies upon the preliminary submissions made and above stated para-wise submissions. It is pertinent to mention here that as and when appropriate representation with respect to taking over of the electrical infrastructure at Aravali Retreat will be made by the recognized RWA same shall be considered. In this regard, it is submitted that the electrical infrastructure can be taken over by the respondent only when the Builder or Authorized RWA has executed the electrification work as required in terms of the load requirement or in the alternative Builder or Authorized RWA has to deposit an amount of Rs. 15,05,37,248/- with the answering respondent so that requisite infrastructure can be constructed.

- 4.26 That content of paragraph no. 32 and 33 are false, frivolous and misconceived and hence denied. It is submitted that respondent Nigam is not bound to respond to any representations made to it by any frivolous and unjustified bodies.
- 4.27 It is further submitted that in fact it is the 'RARRWA' being represented through their Secretary in the present petition and its members themselves who have defaulted in making payments of earlier dues to the answering respondent ('DHBVN') and the same observation has also been made by the Ld. State Registrar, Chandigarh in its order dated 20.03.2017.
- 4.28 That content of paragraph no. 34 and 35 needs no reply.
- 4.29 That contents of paragraph no. 36 are false, baseless, illegal and misconceived hence denied. It is further submitted that the petitioner being Secretary of an unauthorized and unrecognized body cannot invoke jurisdiction of the Hon'ble Commission on frivolous grounds.
- 4.30 That content of paragraph no. 37 needs no reply.
- 4.31 That content of paragraph no. 38 are prayer paras are wrong, baseless, illegal and misleading and ought not to be granted by the Hon'ble Commission.

5. Rejoinder dated: 04/11/2019 by petitioner:

The contents of rejoinder by the petitioner is as under:

- 5.1 That the present rejoinder is being filed on behalf of Shri Sudhir Agarwal, Secretary of Raisina Aravali Retreat Residents Welfare Association (hereinafter referred to as RARRWA) in the captioned petition in response to the reply to the issues raised by the petitioner with respect to the development and maintenance of an efficient, coordinated and economic distribution system in its area of supply of electricity in accordance with the

provisions of Electricity Act, 2013 and also in terms of HERC (Guidelines for establishment of Forum for Redressal of Grievances of the /consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016 for handing over taking over (HOTO) of the entire electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon.

- 5.2 That the contents of Para 2 of the reply of the respondent is a matter of fact that the petitioner has invoked the jurisdiction of this Hon'ble Commission u/s 142 of Electricity Act, 2003 seeking the reliefs mentioned in the petition.
- 5.3 That all submissions and allegations made by the respondent in their reply to the petition are denied. The petitioner wishes to state that the defendant's reply is based on false, frivolous and fabricated facts and documents, unless specifically admitted.

RESPONDENTS MISLEADING THE HON'BLE COMMISSION:

- I. The petitioner wishes to reiterate that the arguments that are being presented by the respondents are misleading, false, deceptive with the sole intention of misleading the Hon'ble Commission and with the intention of not fulfilling their duty, shirking away from their responsibilities, as a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in their area of supply as they are required to do under section 42 of the Electricity Act, 2003 and hence are not sustainable at all.
- II. That the respondents are blaming the consumer for their failures instead of owning their responsibility, as has been laid in 'The Electricity Act, 2003'. That the details being provided by the respondent are wrong and factually incorrect and are being provided to mislead the Hon'ble Commission with the sole intention of shirking from the responsibilities which they are required to fulfil as per the Electricity Act, 2003, towards a consumer.
- III. The respondent is not entitled to obtain an equitable remedy because the respondent is acting unethically and has not provided the correct information to the Hon'ble Commission and therefore is not before the Commission with clean hands.

REPLIES TO THE PRELIMINARY SUBMISSIONS:

- 5.4 That the contents of para 4 of the reply by the respondent to the petition are false, frivolous, fabricated and baseless hence are denied. That the orders of learned State Registrar, Chandigarh dated 20.3.2017 are a matter of record. However, anything contrary to the records of the office of State Registrar, Chandigarh in respect of its order dated 20.3.2017, is denied. That the submission of the respondent that learned State Registrar, Chandigarh has declared "Raisina Aravali Retreat Residents Welfare Association", Gurgaon (RARRWA) as illegal RWA with no moral rights, is not true and therefore denied in totality. This statement by the respondent is an absolutely untrue and hence as it has been said earlier, the respondent is not approaching this Hon'ble Commission with clean hands and is not being truthful in its statements to the Hon'ble Commission.

The relevant para, claimed to be the of the order of the Ld. State Registrar by the respondent, in the reply, in fact, is an allegation of the second Association in the area namely "Ansal Retreat Residents Welfare Association" (ARRWA), in one of their replies to a petition by Ansal Properties & Infrastructure Ltd, the developer of the project called Ansal Aravali Retreat.

- 5.5 That the content of para 5 are a matter of record and anything which is contrary to the records are false, frivolous, fabricated and baseless hence are denied. That the handing over the Association, as is being mentioned by the respondent is not as per the Agreement entered into between the Ansal Properties & Infrastructure Ltd., and the owners, and hence has also been challenged before the concerned authorities and the matter is still pending before the Registrar General, Chandigarh. The respondent is absolutely ignoring the fact that the members of the petitioner association, on whose behalf this petition has been filed, is a consumer as per The Electricity Act 2003 and hence has all the right to file this petition, through their Association. That the definition of a consumer as per the Electricity Act, 2003 is as under:

"consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be"

As per the above definition of a consumer, each person who is supplied with electricity for his own use by a licensee is a consumer hence all the persons who have filed this complaint under the banner of an Association are individual consumers.

IT IS THE DUTY OF THE DISTRIBUTION LICENSEE TO DEVELOP AND MAINTAIN AN EFFICIENT, COORDINATED AND ECONOMICAL DISTRIBUTION SYSTEM IN HIS AREA OF SUPPLY:

Section 42 (duties of distribution licensee and open access)

It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.”

That, since the electricity connection has been given to each individual and electricity is being supplied to each individual and individual bills are being raised and amount towards the bills is being collected from each individual hence as per Section 42 above, it shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Hence Ansal Properties & Infrastructure Ltd. has no authority to take the Law in its own hands and handover the electrical infrastructure to someone who is not authorized by the Electricity Act 2003 and hence handing over the electrical infrastructure by Ansal Properties & Infrastructure Ltd is absolutely illegal in total violation of the laws of the land. It is further submitted that the maintenance of an electrical structure is done by qualified technicians and requires subject matter experts to maintain the same, as any negligence can result in a fatal casualty hence it has to be maintained by the Dakshin Haryana Bijli Vitran Nigam and no one else as this department only has the technical staff to maintain.

- 5.6 That the contents and the allegations of para 6 are false, frivolous, fabricated and baseless hence are denied. It is absolutely clear from the above facts that the respondent is only trying to shirk away from its responsibilities which it is bound to fulfil as per the Electricity Act 2003. It is denied that the petitioner has approached the Hon’ble Commission with unclean hands. It is further denied that the petitioner has suppressed any facts or has suggested false information.

- 5.7 The contents of para 7 are denied. It is denied that the petitioner is doing anything that is contrary to good conscience. The fact is that the petitioner is a consumer and is being harassed by the respondent by not maintaining the electrical structure for which the respondent is collecting the charges from the petitioner. It is therefore, denied that that the present petition is with malice. That the petitioner is taking undue and unfair advantage of the vulnerable position of the residents and its own position of dominance and monopoly in the matter of supply/distribution of electricity. DHBVN is not taking over the maintenance of the electrical infrastructure or paying heed to the other grievances of the petitioner/applicant, in spite of the law being unambiguous on this issue. That it is further submitted that under section 42 of the Electricity Act, 2003, it is the statutory obligation of DHBVN being the distribution licensee to develop and maintain an efficient and coordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the Act and to immediately take over the electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurgaon and maintain the same.
- 5.8 The petitioner is not privy to this information on how the respondent has analyzed the load requirement vis-à-vis the current infrastructure installed at Ansal Aravali Retreat and the basis of having done the calculation. However, the method of calculation as mentioned at para 14 is absolutely wrong and hence not acceptable and has been furnished with the sole intention of misleading the Hon'ble Commission by quoting a very heavy requirement not at all based on the facts and circumstances, as applicable on the Ansals Aravali Retreat but on a theoretical calculation ignoring the hard core ground reality that Ansals Aravali Retreat is an Agriculture Farm land where the requirement of load, in last 29 years of its existence, has not been more than 6 kW per farm, on an average, and in all there are 457 Nos. of one Acre farms and 218 Nos. of 2 Acres farm and till now only 195 people have taken the connection in last 30 years of the area having been developed.
- That the respondents are blaming the Consumers rather than owning their responsibilities as bestowed upon them under the Act and fulfilling the same.
- 5.9 That the contents of para 9 are false, frivolous, fabricated and baseless hence are denied. That the respondent has been giving connections to the different farm owners individually on applications being made by them for the last

twenty-nine, collecting the electricity charges individually and the entire electrical infrastructure was laid with the consent and approval of the Executive Engineer and the officers below in the year 1991 and the necessary documents of approval have already been submitted with the petition. It is further reiterated as was stated in the petition and the written argument submitted before the Hon'ble Commission, the respondent is giving misleading statement saying "Electrification Scheme was not approved by The Electrical Inspectorate, Haryana." Whereas the fact is that the petitioner had enclosed all the copies of the approvals by the Electrical Inspectorate, Haryana with the petition.

That it is further submitted that since the electrical infrastructure within the colony has been installed/ laid with due certification of load bearing capacity and are based on the certificates of worthiness issued by the electricity department, it is their responsibility and duty to develop it further and maintain the same. That we had enclosed the following documents with the petition and the written argument to prove that the entire infrastructure relating to Aravali Retreat Electrification was laid with the approval of the offices of the Haryana State Electricity Board right from the level of SDO to XEN to SE. These documents have been procured under RTI:

- (i) Letter of Approval of HT Line dated 01.08.1991
- (ii) Letter of Inspection of Transformer & HT Line Dated 08.04.1991
- (iii) Electrification Schemes & its approvals dated 06.07.1990 /28.10.1991
- (iv) Dates of grant of 31 Electrical connections before May 1992.

That in 1992 one 11 KV feeder at a cost of more than 34.25 lacs was provided with the approval of the HSEB, Gurugram as per above documents enclosed from the Tikli Feeder up to Ansals Aravali Retreat entrance gate No.1. The said feeder was provided directly from the Tikli rural feeder. However, during the last 27 years, many adjoining villages like Akhlimpur, Tikli, Gairatpur Bas, Kheda, Pandala etc. have been granted connection from the said Tikli rural feeder. All these villages are consuming electricity from the said feeder which was laid by Ansals and hence, the very use by HSEB of the infrastructure laid by Ansals, implies that the infrastructure has been taken over by them. This is also resulting in much lesser load reaching Ansals Aravali Retreat hence the residents are being deprived of the provision of

proper and undisturbed electricity in spite of the residents paying the their electricity charges for last 29 years. The Department has been collecting the charges individually from all the consumers but not spending the same on the infrastructure hence, the same has become weak and unstable as claimed by the respondent and hence it is their responsibility to upgrade the same having collected crores of rupees in last 29 years and not having maintained the same even for one day, what to make a mention of upgrading the same. Further the statement of the respondent that the existing infrastructure is only for 2.5 MVA is a matter of record and what is a matter of record needs no reply. Anything contrary to the records and the data available with the respondents is denied.

5.10 The contents of para 10 are false, baseless and misconceived and hence denied except whatever is a matter of record. That the respondent claims to have asked for certain information from the builder / Ansal Retreat Residents Welfare Association through its letters dated 12.10.2018 and 14.3.2019 and further claims the information has not been provided to the respondents. As a matter of fact, the information sought by the respondent, is already available with the respondent. That the necessary information as claimed to have not been received by the respondent is in the possession of the respondent, being the sanctioning authority for the electrical infrastructure.

a) Approved layout plan of the complete project, duly approved from DTCP/ Government of Haryana or some other competent authority as the case may be:

REPLY

I. That this information has already been provided to the respondent before the Hon'ble Commission during last hearing reading as under and repeatedly asking the same information is with the sole intention of delaying the relief to be provided to the consumers.

“That during the discussions before the Hon'ble Commission, the respondents were asked to provide the approval of the scheme by the office of the Town & Country Planning, Haryana, Chandigarh.

II. That we have been able to dig some records and are enclosing herewith the following document.:

letter No. BSP (11) – 90/005 dated 29.1.1990 by the office of Director, Town & Country Planning, Haryana, Chandigarh in reply to letter from

the developer of Ansal Retreat M/s Ansal Properties & Industries Ltd., New Delhi states as under:

“Since the proposed site does not fall in any of the controlled area declared by this department and the provisions of the Haryana Development & Regulation of Urban Areas Act, 1975 are not attracted for the agricultural activities, as such, no permission is required from this department.”

III. That this clearly indicates no permission was required from the office of the Town & Country Planning, Haryana, Chandigarh as the activity proposed was an agriculture activity.

b) Details of Total Farm Houses with their FAR and the area:

REPLY

The details of the total farm houses have already been provided to the respondent and the same have also been recorded by the respondent in their para no. 14 and the same are being reiterated here once again for the convenience of all.

(i) 457 Nos. of one-acre agriculture farm land.

(ii) 218 Nos. of two-acre agriculture farm land.

c) Details of occupied and constructed farm houses with their connected/sanctioned load and details of unoccupied/vacant farm houses.

There are about 195 constructed farm houses and out of this more than 70 farm houses has constructed for the labourers, gardener and the guard to the tune of only 500 sq. feet.

- d) Copy of the approved electrification plan duly approved by the competent authority of electricity department, if any.
- e) Copy of the sanctioned estimate of the electric work already executed in the project, if any.
- f) Capacity wise details of the already energized transformers and their sanctioned estimates

The petitioner has provided the above information at d), e) & f) with the main petition as also with the written arguments submitted and a copy provided to the respondent and the information is placed with the written arguments. Apart from this the petitioner himself had made a mention of these details in para 9 of its reply to the petition.

5.11 That the contents of para 11 are false, frivolous, fabricated, misconceived and baseless hence are denied. That most of the information that is being asked by the respondent was in fact to be provided by the respondent to the Hon'ble Commissioner as would be evident from the following orders of the Hon'ble Commission.

NON-FURNISHING OF INFORMATION INSPITE OF REPEATED ORDERS OF THE HON'BLE COMMISSION:

In the said matter, the Hon'ble Commission had issued an Order dated 4.10.2018 wherein DHBVN was ordered to provide the information as under:
“On query regarding the electrification plan approved by the licensee at the first instance, correspondence regarding inadequate infrastructure, if any, at the time of energization of existing system or thereafter, regulatory provisions in this regard and status of new connections released in the area during the last one year along with the charges recovered thereof, Advocate Shri Ruhel requested for two weeks' time for reporting of existing electric infrastructure in the area along with inadequacy, if any, in addition to the queries as raised by the Commission.”

The information had to be provided within two weeks by the respondent - DHBVN but unfortunately the same has not been provided till date by the concerned officers of the DHBVN, for reasons best known to them.

Again on 15.4.2019, the Hon'ble Commission had issued an Order wherein DHBVN was ordered to provide the information as under:

“Further, the Commission directs the respondent to submit complete chronology of conversion from original electrification plan to as on date, reasons for providing commercial connections when original electrification plan did not have any commercial establishment, total load as on date and detailed replies to the petition. Also, the respondent shall submit the reasons of not taking over & maintaining the electrical infrastructure up to the meter, where the connections have been directly released by the respondent.”

This information has also not been provided till date as a copy of the same had to be provided to the petitioner as well.

The information which the respondent is supposed to be providing is now being asked from the petitioner whereas the respondent himself is in possession of the information and has not adhered to the orders of the Hon'ble Commission in spite of repeated orders of the Commission.

- 5.12 That the contents of para 12, 13, 14 & 15 are false, frivolous, fabricated, misconceived and baseless hence are denied. That since the replies to the four clauses are inter-connected hence being replied together. That the load requirement ascertained by the respondent is absolutely baseless, without application of mind, without working out the details of the load sanctioned during last 29 years and without having gone through their own bills raised by the respondents on the various consumers and hence is not acceptable at all.

The respondent has based the entire calculation through hypothetical figures in terms of the number of farm owners who need the electricity and again an hypothetical figure of the requirement of electricity by each farm owner, which is much less than the factual data available with the respondent in their own records. Hence the analysis prepared by the respondent is baseless and is very hypothetical.

The Sales circular No. D – 16/2017 dated 12.4.2017, which provides for electrical load norms in respect of different categories to ascertain the load requirement speaks only for the residential plots and does not provide the load requirement for an agriculture farm land which is far too less than what has been calculated by the respondents and provided in para 13.

That even the policy announced by the Government of Haryana, Department of Town & Country Planning notified by policy dated 30.05.2014 for planned development of low density eco-friendly colonies vide license under Act No. 8 of 1975, which provides for planning parameters for individual farm plots is also not applicable on the agriculture farms at Ansals Aravali Retreat.

The load at Ansals Aravali Retreat has to be calculated with proper application of mind by the respondent and after having gone through the details of the connections given so far, the connected load, the type of meter etc. This requirement would not come to more than 1200 KVA and considering 80% loading position of the transformers, the actual capacity required would be 1.5 MVA which is much less than the existing installed capacity and therefore the petitioner by making wrong statements of the

demand to be 10 MVA is only trying to mislead the Hon'ble Commission by giving wrong and inflated figures to the tune of more than 10 to 7 times of the actual connected load and more than 12 times the actual consumption in the area.

That the load norms mentioned in para 14 copied from the Sales Manual, are only for sector/ colonies developed by HUDA/ Private Colonies and not for the agriculture farms wherein the consumers at Ansals Aravali Retreat have not asked for more than 6 kW in last more than 29 years except for few who have been granted more load illegally by the DHBVN, Badshahpur and the actual consumption is much less as elaborated above.

That I have obtained copies of more than 100 bills for the connections given at Ansals Aravali Retreat from the website of DHBVN and in all the cases but for few the loads sanctioned is 6 kW. Copies of the few of the bills have already been enclosed with the Written Arguments submitted and a copy handed over to the respondent in the office of the Commission.

That till now, as we understand, only 200 to 250 connections have been provided by the office of DHBVN, Badshahpur to the owners of the farm houses at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna with an average of 6 kW connected load.

WHAT WAS THE PROJECT AND THE HIGH HANDEDNESS OF DHVBN, BADSHAHPUR IN GRANTING LOAD/ GRANTING CONNECTIONS AT THEIR WHIMS AND FANCIES FOR HF OR SP.

That since the entire scheme was for the developments of the agricultural farms, the connections so provided should have been for horticulture whereas respondent has been giving connections for Horticulture / Small Power (SP) / Commercial Purposes at their whims and fancies based on "Show me the face and I will tell u the Rule" and to some for only Horticulture though there is no horticulture activity going on in that farm. That the charges for Horticulture are 0.25 Ps per Unit whereas those for SP are Rs. 6.40 per Unit. That most of the owners are paying Rs. 6.40 per Unit and have been given SP connection but few select have been given Horticulture connection.

That in spite of paying for the SP charges for an agricultural farm land project, where the charges should have been paid for horticulture connection, the DHVBN, Badshahpur is not providing the maintenance & servicing to the consumers, which they are bound to as per the law.

WHAT IS HORTICULTURE / AGRICULTURE AS PER THE LAW AND WHAT ALL CONSTRUCTION IS PERMISSIBLE ON THE AGRICULTURAL LAND AND HOW CONSUMERS ARE BEING MADE TO SUFFER DOUBLE LOSS OF MUCH HIGHER CHARGES AND NO MAINTENANCE & SERVICE BY DHBVN:

That as per Section 2 (1) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 Act, Agriculture is defined as under:

"Agriculture" includes horticulture, dairy farming, poultry farming and the planting and upkeep of an orchard"

That Section 6 of Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 reads as under:

Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director

Provided that no such permission shall be necessary for erection or re erection of any building if such building is used or is to be used for agricultural purposes or purposes subservient to agriculture.

Hence agriculture / horticulture and the construction so required to carry on the horticulture activity which is termed as subservient to agriculture is permissible on the agriculture land.

- 5.13 That the contents of para 16 & 17 are false, frivolous, fabricated, misconceived and baseless hence are denied for the reasons elaborated in para 12. That the tentative cost of implementing the infrastructure as elaborated in para 14 and para 15 of the reply on behalf of the respondent is very heavily exaggerated for the reasons explained in para 12 since the required infrastructure to meet the existing demand, as is being met for last 29 years, is enough. However, unfortunately the respondent in spite of

collecting the charges from the consumers during last 29 years and in spite of collecting SP Charges, though the need of the consumer is for AP connection, have not been either maintaining the infrastructure on day to day basis nor have been incurring expenses on upgrading the systems which in last 29 years has gone weak and unstable as claimed by the respondent. The respondent is not aware of the legal status of the land, which the petitioner has tried to explain and hence is giving estimates based on load assessments through his own figment of imagination, without understanding the status of the land and the permissibility of construction in the area.

Para wise Reply of the respondent to the petition:

The petitioner craves leave of the Hon'ble Commission to reply to the para wise reply of the respondent to the petition: -

5.14 It is denied that the contents of paragraph no. 1 of the petition are false and frivolous. The contents of paragraph no. 1 of the petition are absolutely true and nothing mentioned therein is untrue and false and may be read as part of this rejoinder. That the order of learned State Registrar, Chandigarh dated 20.3.2017 is a matter of record. However, anything contrary to the records of Registrar, Chandigarh in respect of its order dated 20.3.2017 is denied. That the submission of the respondent that learned State Registrar, Chandigarh has declared Raisina Aravali Retreat Residents Welfare Association, Gurgaon (RARRWA) as illegal RWA, with no moral rights, is not true and therefore denied in totality. This statement by the respondent is absolutely untrue as has been explained earlier at para 4 above and hence as it has been said earlier, the respondent is not approaching this Hon'ble Commission with clean hands and is not being truthful in its statements to the Hon'ble Commission.

The relevant para claimed by the respondent to be the order of the Ld. State Registrar in his reply, in fact, is an allegation of the Association namely ARRWA at "Ansal Retreat" in one of their replies to a petition by Ansals, the developer of the project called Ansals Aravali Retreat. The fact as informed to the Hon'ble Commission about ARRWA is that this association is under investigation for financial irregularities.....

5.15 There is no need to reply this para. The contents of paragraph no. 2 of the petition are absolutely and may be read as part of this rejoinder.

5.16 It is denied that the contents of paragraph no. 3 of the petition are false and baseless and the contents of the complaint at serial no. 3 may be read as part of this rejoinder.

That the petitioner had enclosed the following documents with the petition and the written argument to prove that the entire infrastructure relating to Aravali Retreat Electrification was laid with the approval of the offices of the Haryana State Electricity Board right from the level of SDO to XEN to SE after the inspection was carried out by their officials both for HT Lines as well as the Transformer and so was the estimate approved by all the officers of HSEB. These documents have been procured under RTI:

- (i) Letter of Approval of HT Line dated 1.8.1991
- (ii) Letter of Inspection of Transformer & HT Line, dated 08.04.1991
- (iii) Electrification Schemes & its approvals dated 06.07.1990 /28.10.1991
- (iv) Dates of grant of 31 Electrical connections before May 1992

That the respondent has been issuing electricity connections on their own whims and fancies with no respect to the law and have been collecting the SP charges and have been doing so for last 29 years and it is after 29 years when the petitioner has raised the issue of maintenance of the electrical infrastructure the respondent states that the scheme was approved for agricultural land. The respondent is wrong in stating that the agriculture farm land has been converted to farm houses as the land is being used as permitted under the Law as explained at para 12 above.

21. The contents of the paragraphs 4 to 16 of the petition are true and may be read as part of this rejoinder.

22. It is denied that the contents of paragraph no. 17 of the petition are false, baseless, misconceived. It is a matter of record that the body "RARRWA" is a legally constituted body and has a legal existence as per the Haryana Registration & Regulation of Societies Act / Rules 2012 and is duly empowered to represent the interest of its members who are the consumers under \ the Electricity Act 2003. It is denied that that any representation or correspondence made to the officials respondent Nigam are futile and ineffective.

- 5.17 There is no need to reply this para. The contents of the paragraphs 18 of the petition are true and may be read as part of this rejoinder.
- 5.18 It is denied that the contents of paragraph no. 19 of the petition are false and frivolous. That the contents of paragraph No. 19 of the petition are absolutely true and nothing mentioned therein is untrue and false and may be read as part of this rejoinder.
- 5.19 That the contents of paragraph No. 20 to 31 of the petition are absolutely true and may be read as part of this rejoinder.

That the information, as ordered by the Hon'ble Commission, to the respondent, has also not been provided till date by the respondent as a copy of the same had to be provided to the petitioner as well. The information so required to be provided by the respondent was very essential to assess the actual status in respect of the consumers, the autocratic behavior of the officers of the DHBVN in sanctioning different connections at different stages without following the law, why the infrastructure was not being maintained by DHBVN.

REPLY BY THE "ARRWA" VIDE LETTER DATED 12.09.2017 CONFIRMING "ARRWA" IS ALSO INTERESTED IN HANDING OVER ENTIRE ELECTRICITY INFRASTRUCTURE TO DHVBN

That "ARRWA" has already confirmed through their letter signed by the then Secretary as under:

"The Governing Body has directed me to inform your good office these points and further our RWA is also interested in handing over entire electricity infrastructure to DHVBN."

Hence it is very clear from the above that the respondent is trying to mislead the Hon'ble Commission by providing wrong facts and is not coming before the Hon'ble Commission with clean hands.

MISLEADING FACTS THAT THE ELECTRICAL INFRASTRUCTURE NOW BELONGS TO ANSALS RETREAT RESIDENTS WELFARE ASSOCIATION (ARRWA) AS THE MAINTENANCE HAS BEEN HANDED OVER TO ANSALS

ARAVALI RETREAT BY ANSAL PROPERTIES & INFRASTRUCTURE LIMITED

That the Associations are formed under Haryana Regulation & Registration of Societies, Act 2012 and Haryana Regulation & Registration of Societies Rules 2012 and hence their operation has to be as per the HRRS Act/Rules 2012.

That under Section 42 of the HRRS Act, 2012 all property movable and immovable vests in the members or their successor-in-interest who have contributed for the acquisition of such property. Section 42 of the HRRS Act 2012 reads as under:

“All property, movable and immovable, belonging to a society, whether acquired before or after its registration, if not vested in the trustees, shall vest in the Society, and any such property may be referred to as the property of such Society in any legal proceedings:

Provided that in case a Society is registered for the purposes of the Haryana Apartment Ownership Act, 1983 (Act 10 of 1983), a housing society or a resident welfare association registered as a Society for the operation, management and maintenance of facilities for the residents or civic amenities of any defined area, the property may vest in the members or their successor-in-interest who have contributed for acquisition of such property.”

That what is an immovable property is defined in different Acts as under:

The Term “Immovable Property” occurs in various Central Acts which define this term. The most important act which deals with immovable property is the Transfer of Property Act (T. P. Act).

B. Definition of Property:

- i. According to Section 3 of that Act, “Immovable Property” does not include standing timber, growing crops or grass. Thus, the term is defined in the Act by excluding certain things. “Buildings” constitute immovable property and machinery, if embedded in the building for the beneficial use thereof, must be deemed to be a part of the building and the land on which the building is situated;

ii. As per Section 3(26) of the General Clauses Act 1897, “immovable property” “shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth”.

iii. Section 2(6) of The Registration Act, 1908 defines “Immovable Property” as under:

“Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass”.

That the above definition clearly means that the electrical infrastructure is within the definition of immovable property.”

That any immovable property in the entire complex is the undivided common property of all the owners and absolutely beyond the jurisdiction of any Resident Welfare Association to be even touched without the permission of each and every owner, not to make a mention of having any control on that and more specifically the electrical infrastructure which requires to be maintained and serviced by the DHBVN under the Electricity Act, 2003 is the property of the DHBVN as detailed earlier in this para.

That the Association therefore cannot claim a right over the electrical infrastructure which belongs to the owners as per the HRRS Act/Rules 2012 and in any case the Association has confirmed through a letter that they would like DHBVN to maintain the electrical infrastructure.

MAINTENANCE AND SERVICING OF THE INFRASTRUCTURE BY QUALIFIED STAFF:

That it is needless to say that the infrastructure comprises of HT installation, LT Installations, Electric Poles, Transformers etc and the servicing and maintenance of the same has to be carried out by a certified class - I contractor, a facility not at all easily available in the hands of the resident or the RWAs.

That the maintenance of the electrical infrastructure by an RWA is absolutely illegal and that too when they do not have any qualified staff

to maintain the same which is a must, as an infrastructure with HT/LT lines cannot be maintained by any electrician who is not qualified to do so and is illegal.

That it is submitted that because of very heavy wind lot many poles and the electric wires get dismantled and fallen. In absence of availability of certified class I Maintenance Staff with the Residents Welfare Association and with the DHBVN not taking over and maintaining the distribution system, the situation gets quite dangerous to handle as this could lead to some untoward incident in the near future.

5.20 It is denied that the contents of paragraph 32 and 33 of the petitions are false, frivolous and misconceived. That the contents of paragraph no. 32 & 33 of the petition are absolutely true and may be read as part of this rejoinder. It has been earlier clarified in the petition in detail that RARRWA is absolutely a legal organization and its members are the consumers as per the definition of the Electricity Act 2003. It is absolutely denied that the members of RARRWA have defaulted in making payments of its dues to DHBVN. It is a fact that the Hon'ble Commission has already accepted to our request in instructing the respondent to maintain the infrastructure and the order dated 27.06.2019 of the Hon'ble Commission at sr. no.7 which itself is an evidence that the Hon'ble Commission has accepted us as the consumers as per the definition under the Act.

That it is submitted that the electric connections and transformers etc. are the property of the DHBVN and should be taken over by them immediately. A period of 29 years has lapsed already and DHBVN has been readily collecting revenue from the farm land owners as per details given above but has not been maintaining the infrastructure which should have been taken over by them long back.

That it is further submitted that since the electrical infrastructure within the colony has been installed/ laid with due certification of load bearing capacity and are based on the certificates of worthiness issued by the electricity department, it is their responsibility and duty to develop it further and maintain the same.

5.21 That the contents of para 34 and 35 of the petition are true and may be read as part of this rejoinder.

5.22 It is denied that the contents of the para 36 of the petition are false, baseless and illegal and it is re asserted that the same are absolutely true and may be read as part of this rejoinder.

5.23 That the contents of para 37 of the petition are true and may be read as part of this rejoinder.

5.24 That the contents of para 30 being the prayer are absolutely true and partial prayer has already been accepted by the Hon'ble Commission and the hence may kindly be read as part of the rejoinder.

6. Submissions dated: 15.11.2019 from Sh. Ashutosh Kumar Panchal, Xen/OP, DHBVN, Sohna – Gurugram in compliance of HERC Order dated 05.11.2019 and 27.06.2019:

6.1 That the petitioner has raised issues with respect to development and maintenance of an efficient, coordinated and economical distribution system in its area for supply of electricity in accordance with the provisions of the Electricity Act, 2003 and also in terms of HERC (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016 for handing over taking over (HOTO) of the entire electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon.

6.2 That vide Order dated 27.06.2019, the Hon'ble Commission has directed the respondent, Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'DHBVN') to provide the following information in the present petition:

- i. Chronology of conversion from Original Electrification Plan to as on date;
- ii. Reasons for providing commercial connections when original electrification plan did not have any commercial establishment;
- iii. Total load as on date;
- iv. Reasons for not taking over and maintaining the electrical infrastructure up to the meter.
- v. List of all connections provided to the consumers in the petitioner's area date wise from first to last connection along with names of officers/officials who provided such connections.

6.3 That in furtherance of the directions issued by this Hon'ble Commission vide Order dated 27.06.2019, the respondent duly filed reply dated 23.07.2019

("Reply") raising objections regarding the maintainability of the present petition. The respondent also provided the information as directed in order dated 27.06.2019 in the following manner:

a) Chronology of conversion from Original Electrification Plan to as on date:

- i. In this regard, it is submitted that no electrification plan was submitted by the developers/petitioner of the subject area to the respondent. The respondent stated in para 20 of the reply that no approval of the electrification plan was accorded to the developer/petitioner by the respondent rather only the deposit estimate was approved by erstwhile HSEB for releasing some tube well connection for using the land for agricultural purposes only. The said estimate nowhere envisaged that the agricultural land would be converted or used for making farmhouse. Vide letter dated 05.04.1991, permission to energize the transformer was accorded by Executive Engineer, Electrical Inspectorate to M/s Delhi Towers Ltd., Aravali Retreat. Therefore, the petitioner is wrong in contending that the any electrification plan was approved.

b) Reasons for providing commercial connections when original electrification plan did not have any commercial establishment

- i. As stated above, no electrification plan was submitted by the developer or approved by the respondent. It is submitted that the respondent never gave any commercial connection at time of releasing connections to the consumers in the subject area. All the connections were released for horticulture/ agriculture and residence purpose. In the year 2017, the Vigilance Department of the respondent conducted an inspection in that area and found change in use of connections from horticulture to commercial and some other categories. Consequently, electricity charges were assessed for such unauthorized use of electricity as per the applicable sales circular of the respondent and notices were served upon all such consumers for depositing the assessed amount. A list of all such consumers on whom the electricity charges were levied is annexed herewith.
- ii. It is further submitted that some of such consumers have challenged the provisional assessment orders of the respondent

before the Civil Court Gurugram. The Hon'ble Civil Court vide interim orders passed in such cases have granted stay/ permanent injunction restraining the respondent from disconnecting the electricity supply to such consumers pursuant to the provisional assessment orders upon payment of the outstanding amount. The Hon'ble Court has directed the respondent to raise bill as per the current consumption charges of electricity at the rate of horticulture load till the pendency of the suit. A list of all such cases along with relevant orders is also annexed herewith. Thereafter the billing of all such consumers was done accordingly in compliance of the orders of the Hon'ble Civil Court. For those consumers who paid the amount as per the provisional assessment order, the billing of all such consumers is being raised as per their actual usage.

- iii. It is submitted that the respondent issued connections in the subject area till 2016. Post 2016, the respondents refused connections in the subject area due to demolishing of all the illegal constructions in the subject area by the District Administration as well as in view of the letter of the Haryana Pollution Control Board dated 24.06.2016 and notification dated 07.05.1992 issued by Ministry of Environment and Forest ("MOEF Notification") which indicated that the said area is prohibited for electrification activities.
- iv. One such consumer who was denied the electricity connections had filed a complaint against the respondent before the CGRF in case no. 1411 of 2016. Vide Order dated 09.09.2016, CGRF directed the respondent to issue connection to the said consumer ("CGRF Order"). The said order of CGRF was further upheld by this Hon'ble Commission vide order dated 18.07.2017 passed in PRO 6 of 2017 ("Commission's Order dated 18.07.2017"). Pursuant to the CGRF Order and the Commission's Order dated 18.07.2017, the respondent started giving connections in the subject area.

c) Total load as on date:

- i. The respondent has provided the information relating to total load as on date, inadequacy in the existing infrastructure capacity, required system augmentation for catering the existing load requirement as well as the cost of required system augmentation in

para 8 to 17 of the reply. However, inadvertently the cost of bay and share cost of the source substation was not included therein. Therefore, the respondent craves leave of the Hon'ble Commission to consider the below-stated tentative cost of implementing the required infrastructure which has been calculated in terms of the sales circular No. D-42/2014: -

S. No.	Description	Amount
1.	Cost of GIS Sub-Station (33/11kV) including civil works but excluding cost of land to be provided by builder. (1 x 12.5 MVA, 33 /11KV Power Transformer)	Rs. 2,27,23,701/-
2.	Cost of 33 kv line @ Rs. 53,63,031/- per KM (approximate length considered 10 km). The length may vary depending upon the connection point and the source sub-station.	Rs. 5,36,30,310/-
3.	Cost of internal infrastructure in case of system on 11kv (including LT network for plotted colonies) @ Rs.70,93,995/- per MVA for inadequate infrastructure of 7.5MVA.	Rs. 5,32,04,962/-
4.	Cost of additional 11kv lines @ Rs. 41,95,655/- per Km (for approximate length of line considered is 5 km.) to be created from proposed 33/11kv sub-station.	Rs. 2,09,78,275/-
5.	Cost of 33 KV Bay taken reference from already sanctioned estimate of HVPNL	Rs. 51,78,600
6.	Tentative share cost of the source sub-station applicable @ Rs. 20,00,000 per MVA for 10MVA ultimate load required (as and when applicable)	Rs. 2,00,00,000
	Total Amount =	Rs. 17,57,15,848/- (Rupees Seventeen Crore Fifty Seven Lac. Fifteen Thousand Eight Hundred and Forty Eight Only.)

d) Reasons for not taking over and maintaining the electrical infrastructure up to the already installed meters:

- i. The respondent stated in para 25 of the reply that “as and when appropriate representation with respect to taking over of the electrical infrastructure at Aravali Retreat will be made by the

recognized RWA same shall be considered. In this regard, it is submitted that the electrical infrastructure can be taken over by the respondent only when the builder or authorized RWA has executed the electrification work as required in terms of the load requirement or in the alternative builder or authorized RWA has to deposit and amount of Rs. 15,05,37,248/- (now Rs. 17,57,15,848/-) with the answering respondent so that requisite infrastructure can be constructed”.

- ii. In addition, the respondent further submits that till date the petitioner or the other RWA i.e. ARROWA has not filed affidavit as directed by this Hon'ble Commission vide daily order dated 15.04.2019 undertaking that they are ready to bear the cost of upgradation of the system and the cost of making up inadequacy in the electrical infrastructure of the project. The petitioner has also not submitted the details of the various cases of land disputes pending against the petitioner at various forums as directed by the Hon'ble Commission vide daily Order dated 19.06.2019.
- iii. In this regard, it is imperative to state here that the subject location is a closed area which is protected under the Punjab Land Preservation Act 1900 and Forest Conservation Act 1980. The MOEF notification indicated that the said area has been prohibited for electrification activities. It is submitted that the respondent had already produced newspaper articles which reflected that constructions made in the subject area are illegal and the Government is demolishing the same. Hence, it is submitted that the above-stated information regarding the pending cases and undertaking of the RWA is necessary before taking over the exiting electrical infrastructure to understand the extent of liability which the respondent will be taking over. In the above-sated background, permission for construction and erection of the electrical infrastructure in the subject area will be required to be undertaken by the petitioner or the developer. Therefore, the respondent will not be able to undertake the system augmentation activities until clear orders/ permission is issued from the concerned authorities and State Government.

e) List of all connections provided to the consumers in the petitioner's area date wise from first to last connection along with names of officers/officials who provided such connections.

- i. It is submitted that the list of connections was handed over by the respondent while filing the Reply. However, the said list is also attached herewith for record and reference. It is submitted that due to fire in the offices of the respondent in the year 2017, the individual files of the connections issued to the consumers as mentioned in the list is not available with the respondent. Therefore, the respondent has provided the names of the officers as per the incumbency i.e. basis the record of the officer posted at that time when the connections were issued. It is submitted that the respondent does not has record of exact date of issuance of connections to consumers prior to 2004 in the available computerized billing data as manual billing was done at that time.

6.4 That the facts stated in the above affidavit are true and correct to the best of my knowledge. No part of the above affidavit is false and nothing material has been concealed therefrom.

7. Proceedings:

7.1 The case was initially heard on 04.10.2017, whereby the Commission vide interim order dated 12.10.2017, interalia directed the respondents to submit their replies.

7.2 Further, during the 2nd hearing dated 04.10.2018, the counsel, Shri Raheel Kohli, appeared for the respondent and submitted that the petitioner has no locus standi to file the present petition. The petitioner is not authorized to represent the residents of Ansal Aravali Retreat in view of the order dated 20.03.2017 of the State Registrar, Chandigarh. He further argued that the entire management and maintenance of the society was transferred to Ansal Retreat RWA vide agreement dated 10.04.2015, executed between Ansal API and Ansal Retreat RWA. Per contra, Shri Kuldeep Kumar Kohli, counsel for the petitioner, submitted that the argument presented by the respondent is misleading and unsustainable as even an individual within his rights may approach this Commission for justice. He further informed that individual connections have been/are being released by the respondent in the area; however, the electrical infrastructure up to the electricity meter has not been

taken over and maintained by the respondent Nigam in spite of their obligation to do so under Section 42 of Electricity Act, 2003.

- 7.3 The matter was again heard on 05.04.2019 wherein Shri Manuj Kaushik appeared for the respondent and submitted that the original electrification plan comprised only of farm land whereas now there are many commercial establishments in the area. The petitioner, while arguing the matter, prayed that the system may be taken over by DHBVN and the RWA is ready to bear the cost of upgradation of the electrical infrastructure. However, counsel for the respondent took an objection that the petitioner, M/s Raisina Aravali Retreat Residents Welfare Association, is not competent to file the present petition as per the order dated 20.03.2017 of the State Registrar, Chandigarh. The other RWA, M/s Ansal Retreat Residents Welfare Association (ARRWA) is the legal authority to represent Ansal Aravali Retreat. He further submitted that ARRWA has been carrying out maintenance of the entire infrastructure and is also interested in handing over the entire electricity infrastructure to DHBVN. On this the counsel for the petitioner admitted that there are two RWAs and the other RWA has also given in writing that they have no objection if the electricity system is over by DHBVNL.

The Commission, vide interim order dated 15.04.2019, in the interest of justice directed the petitioner to file an affidavit to the effect that they are ready to bear the cost of upgradation of the system and the cost of making up inadequacy in the electrical infrastructure of the project. The Commission directed the other party i.e., ARRWA, to submit its reply in form of an affidavit, in terms of stand taken by the petitioner. The Commission also directed the respondent to submit a complete chronology of conversion from the original electrification plan to as on date, reasons for providing commercial connections when original electrification plan did not have any commercial establishment, total load as on date and detailed replies to the petition. The respondent shall also submit the reasons of not taking over and maintaining the electrical infrastructure upto the meter, where the connections have been directly released by the respondent.

- 7.4 The matter again came up for hearing on 18.06.2019, wherein, the respondent submitted that there were various cases of land disputes pending against the petitioner at various forums including the Hon'ble High Courts and Hon'ble National Green Tribunal etc. The Commission, vide interim order dated

19.06.2019, directed the petitioner to submit copies of all petitions and judgements of various cases filed against them before the Commission. Further, regarding compliance of the directions in the interim order dated 15.04.2019, the respondent submitted that they have submitted the detailed proposal to their higher authorities for approval. Accordingly, the Commission again directed the respondent to submit the information as mandated in the interim order dated 15.04.2019 and also to submit a list of all connections, date wise from first to last connection, provided to the consumers in the petitioner's area. The Commission also noticed that the affidavit for RWA ready to bear the cost of upgradation of the electrical infrastructure submitted by petitioners was not notarized and copy of the resolution of general body meeting was not attached with it. Therefore, the Commission again directed them to submit the appropriate affidavit.

- 7.5 The matter again came for hearing on 25.06.2019 wherein the Commission, vide interim order dated 27.06.2019, directed the parties to comply with all the directions of the Commission issued in the previous interim orders dated 19.6.2019 within one month of this order as the same were pending for compliance from both the petitioner and respondent in their respective cases. The Commission also directed the respondent i.e. DHBVN to carry out day to day maintenance and cost arises, if any, on account of such maintenance shall be admittedly provided by the petitioner to the respondent.
- 7.6 On hearing the matter again on 05.11.2019, the Commission while referring to the interim order dated 19.06.2019 and 27.06.2019, enquired about the compliance status and observed that the requisite report was not submitted by the respondent DHBVN. Accordingly, the Commission while adjourning the matter imposed a cost of Rs. 25,000/- for the non-compliance of the directions issued in the interim order dated 27.06.2019 on respondents.
- 7.7 The matter again came for hearing on 27.11.2019 wherein the Commission again directed the petitioner to comply with the directions given in the interim orders dated 15.4.2019 and 27.06.2019 to file an affidavit (duly notarized) to the effect that they are ready to bear the cost of upgradation of the system and complete chronology of conversion from original electrification plan to as on date within 15 days of this order.

The respondent submitted that in compliance of the Commission's order dated 27.06.2019 (i.e. List of all connections provided to the consumers in the petitioner's area date wise from first to last connection along with names of

officers/officials who provided such connections), the individual files of the connections issued to the consumers could not be made available due to a fire in their office in the year 2017. However, the names of the officers, as per the incumbency i.e. basis, the record of the officer posted at the time when the connections were issued has been provided. Further no record is available regarding exact date of connections to the consumers prior to 2004 in their office.

The Commission vide interim order dated 27.11.2019, in order to ascertain the status of the land decided that directions be issued to the Deputy Commissioner, Gurugram to send a report regarding present status of the land of Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurugram, whether it is a Gair Mumkin Farm House or Gair Mumkin Pahar and whether there is any litigation pending regarding the land being a part of Aravali Forest land in any court of law in India.

- 7.8 The matter again came for hearing on 25.02.2020 wherein the Commission observed that the requisite report from Deputy Commissioner, Gurugram regarding the present status of the land of Ansal Aravali Retreat, Village Raisina, Tehsil Sohna, Gurugram, on whether it is a Gair Mumkin Farm House or Gair Mumkin Pahar and whether there is any litigation pending regarding the land being a part of Aravali Forest land in any Court of Law in India is still awaited in the matter. Further, the Commission observed that as cases had been filed against the petitioners under the Environment Protection Act in the Environment Court, Faridabad, a report also be obtained from the Director, Environment, Haryana regarding the final outcome of these cases against the developers and residents of Ansal Aravali Retreat and whether any case is pending before the Hon'ble High Court or National Green Tribunal.
- 7.9 The matter came up for hearing on 08.07.2020 through virtual court in view of the Covid-19 pandemic, and the petitioner submitted that the cases filed by Regional Officer, Haryana State Pollution Control Board, Gurugram in the Environment Court, Faridabad had been decided in favour of the Farm House Owners on the ground that the farm houses had been constructed before 1992, whereas Aravali notification is of 07.05.1992. DHBVNL had been regularly issuing Electricity Bills to the Farm House Owners and payment for the same was also being made regularly. The Commission also observed that the final report be obtained from Deputy Commissioner, Gurugram and Secretary,

Haryana State Pollution Control Board (HSPCB) before taking the final view in the matter.

7.10 The matter again came for hearing on 16.06.2021 wherein the petitioner submitted that out of 300 connections, 21 connections have been released during the last one year even after the respondent claimed the construction on this site as illegal. During this hearing, the respondent also submitted that certain news articles and orders of the Hon'ble High Court regarding the illegal construction and deforestation in the said area causing environmental harm was brought to the knowledge of the Commission and requested that till the time the decisions for pending litigations in the various Forum are decided, the connection cannot be released at this site. However, the Commission observed that the question is not about the release of connection but maintenance of the connections. To this the respondent submitted that if the petitioner(s) are willing to bear the cost for maintenance as it has already been intimated to them, they are ready to maintain the electrical infrastructure.

The Commission, vide interim order dated 01.07.2021, directed the petitioner to submit the list of these connections released during the last one year. The Commission also directed the respondent to submit an affidavit providing the details of the 21 connections released during last one-year along with a copy of the directions issued. The Commission directed the respondent to submit the list of cases pending before the Hon'ble High Court or any other court in the matter and in case where final order has been passed, then copy of the judgement be submitted.

The Commission observed that the requisite reports are still awaited in the matter in spite of repeated reminders. The Commission, therefore, decided that if the requisite reports from Deputy Commissioner, Gurugram and Secretary, Haryana State pollution Control Board are not received within 15 days necessary action under section 142 of Electricity Act,2003 will be initiated.

7.11 The matter again came up for hearing on 25.08.2021 during which the Commission observed that a report from the Secretary, Haryana State Pollution Control Board has been received, wherein it has been mentioned that there are 425 farm houses in the Ansal Aravali Retreat, Village Riasina, Gurugram against which prosecution was filed by Gurugram region (south), HSPCB under violation of Aravali notification dated 07.05.1992 in the Special Environmental Court, Faridabad. All the 425-farm houses are covered under Gair Mumkin Farm House or Gair Mumkin Pahar. However, the revenue records of these

farm houses are available with revenue department. The Commission further observed that the report which was required to be filed by the Deputy Commissioner, Gurugram, has not yet been filed. Therefore, the notice under Section 142 of the Electricity Act, 2003 was issued against him vide interim order dated 01.09.2021.

7.12 The matter again came for hearing on 29.09.2021, wherein the Commission noted with concern that as per the directions dated 06.09.2021 issued to the Deputy Commissioner, Gurugram, no report has been filed regarding the final outcome of the cases pending regarding the developers and residents of Ansal Aravali Retreat and also whether any cases are pending before the National Green Tribunal or any other Court. Since several reminders have been issued in the past, this is constant violation of the orders of the Commission. The Commission vide interim order dated 29.09.2021 directed the Deputy Commissioner, Gurugram, to be present through video conferencing, during the next date of hearing to explain his position along with the relevant reports, failing which the Commission will be constrained to initiate proceedings under Section 142 read with Section 146 of the Electricity Act, 2003.

8. Commission's Order:

8.1 The case came up for hearing on 06.10.2021, as scheduled, through video conferencing in view of the Covid-19 pandemic.

8.2 At the outset, Dr. Yash Garg, Deputy Commissioner Gurugram appeared in the matter and submitted that the requisite report has been filed on 06.10.2021. Eight cases related to Ansal Arawali Retreat Riasina Village are pending for disposal before various courts of law and the National Green Tribunal. He further submitted that in compliance of orders of the Hon'ble High Court dated 03.05.2012 (Para 34 and 36) in CRM-M No. 51514 of 2007 and CRM-M No. 880 of 2010 and National Green Tribunal order dated 23.10.2018, in OA No 04 of 2013 and OA No 28 of 2015, the then Deputy Commissioner Gurugram passed the order dated 11.06.2020. After receiving the copy of said orders, rapat no. 499 dated 16.06.2020 and rapat no. 504 dated 17.06.2020 were made by the Halqa Patwari, Raisina in the Rapat Roznamcha for giving effect to the said order. However, no entry qua the said order is made in the Jamabandi till date as the order dated 11.06.2020 passed by the then DC, Gurugram

has been stayed by the Hon'ble High Court in CWP No. 10286 of 2020 titled Ansal Retreat Residence Welfare Association Vs State of Haryana and another vide its order dated 20.07.2020 which is still in force.

- 8.3 The petitioner submitted that the Deputy Commissioner, Gurugram has no authority to change any entry in the revenue records and has not submitted any statement with regard to this. He further submitted that DHBVN has been supplying electricity from the last 30 years in this area and any denial of the supply may cause problem to the residents of the area.
- 8.4 The Commission observes that the Hon'ble Punjab and Haryana had granted a stay in CWP No. 10286 of 2020 titled Ansal Retreat Residence Welfare Association Vs State of Haryana and another which prevents the Deputy Commissioner, Gurugram from changing the nature of the land in the records. Similarly, eight other cases are pending before various other Courts and Tribunal as far as litigations qua the Ansal Aravali Retreat, village Raisina.
- 8.5 Keeping in view the above, the Commission is not inclined to pass any order till the final outcome of CWP No. 10286 of 2020 (supra) and other cases. Therefore, the Commission decides to dispose of the instant petition without any direction to the respondents.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 19/10/2021.

Date: 19.10.2021
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman