

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

Case No. HERC/P. No.61 of 2023

Date of Hearing : 16/12/2024

Date of Order : 03/01/2025

IN THE MATTER OF:

Petition under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 (“Duty to Supply Regulations”) and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 (“Supply Code”) read with Section 142 and 146 of the Electricity Act, 2003.

Petitioner

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

VERSUS

Respondent:

1. Parsvnath Developers Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032
2. Resident Welfare Association (HR/008/2016/01676), Parsvnath City Block-A, Sector 8, Block-B Sector-9, Sonipat-131001

Present

On behalf of the Petitioner

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

On behalf of the Respondent

Ms. Rupali S. Verma, Advocate

QUORUM

**Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member**

ORDER

PETITION:

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

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

4. In view of the foregoing facts and circumstance, Commission observes that as per petition/ statement of the petitioner, the RWA is

not ready to deposit amount equivalent to the inadequacy which is in contradiction to the contents/prayer. Therefore, the petition does not survive and the same is disposed of, being infructuous. However, the petitioner may file a fresh petition if need be."

- 1.4 That thereafter, the Petitioner modified the proposal after consulting the members of the RWA of TDI City Panipat, and the condition with respect to submission of the joint affidavit and deposit of complete inadequacy amount of township by RWA was dispensed with. The said revised proposal was submitted to the State Government for approval and the same was approved with the following terms -
- i. For the release of connection in licensed colonies with deficient infrastructure and non-availability of bank guarantee by developer, the requirement of joint affidavit through RWA and deposit of complete inadequacy amount of town ship by RWA after its collection from members of RWA be dispensed with, as no RWA come forward to adopt it.
 - ii. In licensed colonies with deficit electrical infrastructure, the electricity connections be released to individual new connection applicants or existing applicants seeking extension of load by depositing individual affidavit and development charges by individual consumer on voluntary basis to UHBVN on the same methodology and principles as being followed in DHBVN with the approval of State Government,
 - iii. While calculating the development charges, the cost of land should not be included and earmarked land in layout plan for electric sub-station (ESS) should be transferred to DISCOM, which will be ensured by DTCP. In cases, where land is not earmarked for ESS, but load norms of power utilities requires creation of sub-station, in that case the DTCP / HSVP shall ensure transfer of suitable land i.e. pieces of land wherein General electric Layout Plan (GELP) of proposed sub-station fits in.
 - iv. Similarly, the credit of electrical infrastructure already created by the developer should also be given by DISCOM while calculating the development charges.
 - v. For any required augmentation of distribution system in the township as per technical standards in vogue, the same will be carried out by Discom out of available funds accumulated through deposit of development charges.
- 1.5 That in view of the proposal approved by the State Government as referred above, the Petitioner had filed the 4 Petition bearing case nos. HERC/Petition Nos. 32 of 2023, 34 of 2023, 38 of 2023, and 43 of 2023 *inter alia* seeking urgent interim relief for the release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/ rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rate basis voluntarily by the plot holders/ new applicants. In addition, action was sought against TDI Infratech Pvt. Ltd., TDI Infrastructure, and Ansal Properties and infrastructures for defaults in the creation of adequate electrical infrastructure with directions to deposit the requisite amounts in accordance with the conditions of the

approved Electrical Plans and inadequacy in the project. One of the interim orders on the petition for release of connection in respect of TDI City Panipat was issued by Hon'ble HERC vide Order dated 05.07.2023. The relevant excerpts of the said Order dated 05.07.2023 are reproduced herein under for ready reference-

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

Similar orders were also issued by Hon'ble HERC in other cases of Ansal Sushant City, Panipat and Ansal Sushant City, Panipat and TDI City, Sonipat vide Orders dated 21.07.2023 and 12.09.2023. The RWA's of Parsvnath City (Block A& B) Sonipat, (Respondent no. 2) thereafter moved a representation to the Petitioner and requested for the release of connections on similar lines as is being sought in Petition filed for TDI City, Sector-39, Panipat subject to payment of development charges. A copy of 2 nos. representation submitted by the Respondent no. 2 both dated 27.07.2023 and 28.07.2023 is appended herewith.

- 1.6 The Petitioner, by way of the instant petition, is therefore, approaching this Hon'ble Commission for seeking interim measure regarding release of connections to the members of the Respondent no. 2/allottees/flat owners subject to deposit of inadequacy amount required for augmentation/ installation of balance electrical infrastructure to enable release of extended load/new connections with higher load.

A. DETAILS OF PARTIES

- 1.7 That the Petitioner is a State Government Distribution Company; registered under the Companies Act, 1956 formed under the corporatization/restructuring of the erstwhile Haryana State Electricity

Board (HSEB). The Petitioner is responsible for the distribution and retail supply of electricity in the North Zone of the State of Haryana which encompasses the projects developed by the Respondent Developer/Builder.

- 1.8 That the Respondent no. 1 is the developer of the licensed residential plotted colonies, the Parsvnath City comprising 2 DTCP schemes i.e. Block-A & Block-B Sonipat, which are plotted colonies spreading over 84.16 Acres of Block-A and 118.31 Acres of Block-B located in Sector-8,9,10 and 17 Sonipat, Haryana. Respondent no. 1 was granted the following licenses by the Director (Town and Country Planning), Government of Haryana over the years under DTCP Scheme LC-502 & LC-504.

SR. No.	Particulars	Block-A	Block-B	Total
1	DTCP Scheme No.	LC-502	LC- 504	
2	Licenses Numbers	915-945 of 2006	878-894 OF 2006	
3	Approved Lay out plan Area	84.16 Acres drawing dated 08.05.2006.	118.31 Acres drawing dated 09.01.2018.	
4	Area of the Scheme	84.16	118.31	202.47
5	Nos. of Residential Plots	724	932	1656

The developer approved the electrification plan for an area of 84.155 acres (Block-A) in 2007 for 8.3 MVA & 150 Acres (Block-B) for 14.3MVA in 2008, also the revised electrification plan was approved dated 11.11.2022 for area 84.155 Acres (8.16 MVA) and 118.31 Acres (10.407 MVA). The ultimate load as per existing load norms worked out to be 15.71 MVA as the commercial norms have reduced. The layout plans are appended herewith.

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

B. CONSPECTUS OF THE PETITION –

- 1.10 That the Petitioner is filing the instant petition seeking certain urgent relief(s) mentioned in the succeeding paragraphs in view of the representations made to the Petitioner regarding the hardships faced by the owners/occupants/residents of the premises/units in the residential project developed by the Respondent no. 1 (hereinafter also referred to as “Delinquent Developer”) wherein the Respondent no.

1/Delinquent Developer has developed a project by the name of Parsvnath City, Sonipat which falls within the Petitioner's Licence area without adequate electrical infrastructure to cater to the load as per applicable load norms.

- 1.11 That the Respondent no. 2, which is the Resident Welfare Association of the Parsvnath City (Block A and B), Sonipat through their representatives, Mrs. Promila Devi (Block-A) and Mr. Surender Saroha(Block-B) had approached the Petitioner and explained their grievances as regards the irregular supply of electricity owing to lack of adequate electrical infrastructure in the project area. They had also agitated their grievances with respect to the erratic supply of electricity before various Authorities/ Forums/ Courts.
- 1.12 That various owners/occupants/residents of Parsvnath City, Sonipat are seeking new electricity connection/additional load, etc. within the project area of Respondent no.1. However, due to the non-development of adequate electrical infrastructure by the Delinquent Developer and non-submission of Bank Guarantee by the Developer, the Petitioner stopped the release of further connections in the licensed colony.
- 1.13 That a similar situation prevailed in the license area of Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as "DHVBN") i.e. Southern Haryana, especially with respect to the projects of the Delinquent Developers in Gurugram, Haryana. In pursuance to alleviate the grievances of the individual owners/occupants/residents situated within the projects of the Delinquent Developer, a Petition with case no. *HERC/Petition No. 55 of 2021 titled Dakshin Haryana Bijli Vitran Nigam v. M/s.Ansal properties and Infrastructure and Anr.* was filed by the DHVBN before this Hon'ble Commission seeking release of new electricity connections/additional load to distressed residents on voluntary payment of 'Development Charges' to DHVBN subject to adjustment/refund by Delinquent Developers therein by payment of cost to DHVBN or curing prevalent deficiencies.
- 1.14 That the Hon'ble Commission took cognizance of the matter and issued an Order dated 02.02.2022 permitting the DHVBN to release new electricity connections/additional load on voluntary payment of development charges as an ad-interim measure and directed the DHVBN to keep a record of the charges paid by the applicants seeking release of new connection/additional load in the areas developed by Respondents therein and to make the same available to the Commission as and when directed to do so. For the kind perusal of this Hon'ble Commission, the relevant portion of the Order dated 02.02.2022 has been reproduced as under:

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

connection/additional load and voluntarily opt to pay development charges.

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

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

“The Commission has considered the aforesaid submissions made by the parties. Since the inadequacy of each builder/respondent is required to be assessed individually as per the norms/regulations occupying the field at relevant time, the Commission directs the petitioner to file separate petitions regarding inadequacy of infrastructure in respect of each developer with all the relevant details/facts for adjudication within 5 weeks”

- 1.16 That thereafter, as per the directions of the Hon’ble Commission, separate petitions with respect to each of the delinquent developers therein were filed. The Petition bearing case no. PRO 55 of 2021 was disposed of with the order that an ad-interim directions passed vide interim order dated 02.02.2022 be extended to each of the separate petitions filed by DHBVN against the Respondents/Delinquent Developers therein. The relevant extract of the Order dated 14.09.2022 is reproduced as under:

“In the given facts and circumstances, the Commission deems it fit to dispose off the present petition in view of the separate petitions filed by DHBVN. The Commission will now adjudicate the issue of inadequacies in respect of each of the concerned respondent developer based on the relevant facts and details mentioned in the separate petitions filed by DHBVN. Accordingly, the interlocutory application (IA) filed by M/s Unitech Ltd, respondent no-3 shall be heard with the separate petition no 46 of 2022 (DHBVN Vs M/s Unitech Ltd). Meanwhile, in the interest of justice, the ad-interim directions passed in the present petition vide interim order dated 02.02.2022 qua release new electricity connections/additional load on voluntary payment of development charges shall extend to each of the separate petitions filed by DHBVN against the respective Respondent-developers.”

- 1.17 That a meeting was held between the Resident Welfare Association of the TDI City Panipat and the petitioner wherein the members of RWA sought the release of connections from the Petitioner and agreed to bear the development charges and ensure joint submission of the same by collecting the charges the existing members of the township.

Accordingly, the Petition no. 67 of 2022 was filed before the Hon'ble Commission vide order dated 05.01.2023, the Hon'ble Commission observed as under-

"4. The representative of RWA also appeared before the Commission and submitted that as per the meeting with UHBVN officials, they have agreed on the proposal deliberated with them by UHBVN officials.

5. The Commission pointed out that if the licensee can recover the amount of inadequacy from RWA voluntarily subject to refund to RWA in case inadequacy is removed by the developer, then what is the need to come before the Commission for any relief. Therefore, the Commission directs the petitioner to ensure recovery of amount as stated by the representative of the RWA to be paid voluntarily, equal to inadequacy from the RWA within four weeks as per the proposal and approach the Commission with appropriate prayer/request for further adjudication of the matter."

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

similar 3 projects. Therefore, the present petition is being filed before this Hon'ble Commission.

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

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

1.23 That the development charges recovered by the Petitioner will be utilized to create adequate electrical infrastructure in the township. The development charges deposited individually shall be adjusted/refunded (without interest) as when Respondent no. 1 cures the deficiencies or makes payment of the cost thereof. The new connections and load will be released by such augmentation of infrastructure as is feasible in view of the recovered amount. The Petitioner is, therefore, seeking the kind indulgence of the Hon'ble Commission for grant of urgent relief to the distressed members of Respondent no. 2 in terms of the proposed procedure submitted above.

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

1.24 That the Petitioner shall also set out hereunder the defaults of the Respondent no.1 in the installation of Electrical Infrastructure as per the Sanctioned Electrical Plan –

- i. The licensed colonies of the developer are residential plotted colonies.
- ii. The Respondent no. 1 had approached the Petitioner for approval of the Electrification plans for the plotted colony and the electrification plans were approved from time to time as under: -
 - a) The Chief Engineer/OP, Rohtak vide Memo No. Ch-11/C-191/DRG-SNP dated 17.12.2007 approved the Electrification Scheme /Plan for 84.155 Acres residential Township of the Respondents having DTCP Scheme no. LC-502 for Block A.
 - b) The Chief Engineer/OP, Rohtak vide Memo No. Ch-3/C-204/DRG-SNP dated 10.01.2008 approved the Electrification Scheme /Plan for 150 Acres residential Township of respondents having DTCP Scheme no. LC-504 for Block B.
 - c) Approval of revised Electrification Plan & Connectivity of residential plotted colony of respondents over an area measuring 84.155 Acres under DTCP scheme no. LC 502 vide memo no. Ch-

43/SE/Mon/Elect.Plan/173/SNP/2022-23 dated 11.11.2022 by office of SE(Monitoring), UHBVN.

- d) Approval of revised Electrification plan & Connectivity of residential plotted colony of respondents over an area measuring ~118.31 Acres under DTCP scheme no. LC-504 vide memo no. Ch-44/SE/Mon/Elect. Plan/173/SNP/2022-23 dated 11.11.2022. by office of SE(Monitoring), UHBVN.
- iii. The Petitioner Department was constrained to issue a notice bearing Memo No. Ch-11/SE/MON/Elect. Plan/124/SNP/21-22 dated 08.02.2022 calling upon the Delinquent Developer to furnish cost or Bank Guarantees on account of inadequate electrical infrastructure in its projects/colonies situated in Sector-62, Sonipat. The Petitioner Department in the said notice specifically made references to the various provisions of the Electricity Act, 2003, and Regulations framed thereunder.
- iv. Keeping in view the latest decisions with the approval of the State Government, the inadequacy in the project has been calculated afresh, after considering the infrastructure already created in the township, after excluding the cost of land required for sub-station, as 2505 Sq. mtr land earmarked for 33 KV electric sub-station (ESS) in the layout plan has been transferred to UHBVN. After considering the above and as per the latest applicable load norms including revision of commercial load norms issued on 05.07.2023 issued vide Sales Circular No. U-10/2023, the inadequacy amount works out to be Rs 19.37 Crores for the creation of electrical infrastructure to meet the power requirement of plot holders as per their ultimate load requirement. The details are attached.
- 1.25 That in view of the foregoing details, regarding the default of the Respondent no. 1 to install electrical infrastructure for the project, the creation of capacity in the network and required electrical infrastructure for the release of the new connection is not available for all prospective residents in the township. Therefore, there is a dire need to take immediate steps to provide relief to the plot holders or new applicants, and therefore, an immediate ad-interim measure is to be resorted to grant immediate relief to the distressed residents of the colonies/projects developed by the Respondent/Delinquent Developer.

E. COMPUTATION OF DEVELOPMENT CHARGES -

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

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

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

- 1.27 That by applying the above-said formula, proposed Development charges computed for deficient projects of Parsvnath City Sonipat shall be determined. The development charges shall be deposited by individual plot holders of the plotted colony as per single point calculation. Further, the load can be augmented on deposit of development charges computed for group housing colony. It is submitted that the charges are proposed to be applicable upto 31.03.2024 and are to be enhanced by 10% every financial year thereafter. The new applicants of the domestic category have the option to deposit proportionate “development charge(s)” in a lump sum or in 12 EMI’s (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four percent) would be allowed to domestic applicants/consumers opting to deposit development charges in a lumpsum in one go. It is pertinent to mention herein that these development charges shall be refunded afterward subject to recovery that would be made from the Delinquent Developer.
- 1.28 The applicants of other than Domestic Supply (DS) categories would be required to deposit the proportionate development charges in one go before the release of their connections as load of other than DS categories would be quite higher and would require immediate creation of infrastructure to release the same. The above development charges, so deposited by the applicants/consumer would be refunded(without interest) afterward subject to recoveries that would be made from defaulting developers.
- 1.29 That the cost of installing the adequate electrical infrastructure to cater to the ultimate load has to be to the account of the Delinquent Developer/ Respondent no. 1, who has failed to install adequate infrastructure. The members of the Respondent no. 2 shall, therefore, be reimbursed such development charges after recovery made from the Respondent no. 1.

F. LEGAL FRAMEWORK -

- 1.30 That the Hon’ble Commission has ample power to issue such directions as is necessary to ensure the supply of electricity which is a basic amenity. Section 46 of the Electricity Act, 2003 empowers the State Commission to frame regulations to authorise a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply.
- 1.31 That in the exercise of the powers granted vide Section 46, this Hon’ble Commission notified the Duty to Supply Regulations, 2016 as amended from time to time. Regulation 4.1 of the aforesaid regulations empowers Petitioner to recover the expenditure referred to in Section 46 of the Electricity Act, 2003. The Regulation 4.1 reads as under:
“Subject to the provisions of the Act and these Regulations and subject further to such direction, orders or guidelines issued by the

Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations.”

- 1.32 That further the Petitioner places reliance on Clause 4.2 of the Electricity Supply Code Regulations, 2014 which reads as under:
"4.2 licensee's obligation to strengthen/ upgrade/ augment the distribution system and the mode of recovery of the cost thereof:
4.2.3The cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up gradation in the system starting from the feeding substation for *giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by the Commission under Section 46 of the Act.*"
- 1.33 That further under the Electricity Act, 2003, an electricity connection under Section 43 can be provided when the infrastructure required for the supply of electricity is adequate to cater to a load of such consumers. Pertinently, the proviso to Section 43 (1) of the Electricity Act, 2003 provides that where such supply requires an extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning is made. Thus, if the infrastructure required as per peak load requirement of an area is inadequate and the Petitioner releases new connections and provides electricity, the provisions of the Electricity Act, 2003 and the underlying objective thereof shall be rendered otiose.
- 1.34 That with respect to the above, the Commission in Case No. HERC/PRO-21 & 23 of 2013 titled as *Ansal Build Well v. DHBVN &Ors.*, while passing the Order dated 20.02.2015 held that the developer is required to install the electrical infrastructure determined as per the electrical layout plan approved by the Distribution Licensee in accordance with the applicable load norms during the course of development of the colony/Group Housing Societies/residential/non-residential areas. The said Order was challenged by way of a Civil Writ Petition No. 2467 of 2013, however, the same was dismissed as being withdrawn.
- 1.35 That the Hon'ble Commission in a plethora of cases has issued directions from time to time to the delinquent developers thereby taking a stringent view on their defaults leading to hardships being caused to the occupants/owners/residents of their projects. Reliance in this regard is placed upon the judgment dated 09.08.2021 of the Hon'ble Commission in PRO-48 of 2020 wherein it was held as under –
“...it is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load

requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers. The petitioner society falls within the licensed area of M/s Country Wide developers and approval of beneficial interest by DTCP does not absolve them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers for which the case is pending for adjudication (i.e., Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana.”

- 1.36 That further in the matter of Confederation of Real Estate Developers Association of India-Haryana v DHBVN and Ors. (PRO-68 of 2021), the Hon'ble Commission took note of the electrical inadequacies created by the Developers and held as under -

“8. The Commission has carefully examined the contents of the petition, submissions made, arguments placed before the commission during the hearings. The Commission observes that the provisions of the sales circulars which are in contravention of the provisions of the Regulations causing undue hurdle and oppres the right of any genuine consumers 85 should not be the part of any guideline/ sales circulars issued by the Licensee, on the other hand the Act/Regulations also cast duty upon the Licensee to ensure the adequate infrastructure and services to consumer at reasonable cost is provided and to take appropriate measures to deal with defaulting developer/consumer to ensure the recovery of legitimate dues/inadequacy if any in past from such defaulter. A list of 36 developers of only one circle i.e. OP Circle Sonipat submitted by the Respondents, reflecting continuous defaults made by the Developers/ Builders/ Colonizers for the creation of the requisite infrastructure, reveals that the electrical infrastructure had not been created even after the lapse of several years; even the temporary connection which is essentially meant for the limited purpose of undertaking the construction activities has also been used to provide the supply of electricity to regular connections on inhabitants. If the temporary connection is allowed without processing/approved electrification plan, the developer may not be obligated to lay down any electrification infrastructure as seen in the past since the Developers are not coming to create infrastructure even the lapse of 10 to 14 years. Keeping in view of the judgment of Hon'ble Bombay High Court mentioned in para No. 3 above, the electricity connection should not be released to any developer/colonizer or subsidiary or sister concern/partnership firm thereof against whom there are outstanding dues to discourage dodgy practices by allowing developer to form a different corporate entity with similar shareholding/ management and get away with the legitimate payment of dues, despite the fact that the usual person behind both the legal entities would be the same. Therefore, the Commission is of considered opinion that the ibid five challenged clauses of the above said Circulars have been added by the Respondents as deterrent with the intent to curtail the defaults by the Developers in the interest of

consumers, and to ensure that adequate electrical infrastructure is laid down and time limit so fixed is essential to be implemented to have quality of supply to the residents of the township developed by the Developer. As such Commission finds no merit in the petition.”

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

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

1.38 That the developers are obliged in law as well as contractually (in terms of the bilateral agreement between DTCP and the concerned Developer) to install such electrical infrastructure as may be adequate to cater the 'ultimate load' within the area developed by them. If the Developer does not install such adequate electrical infrastructure, the cost thereof shall have to be borne by the consumers within the Project developed by such developer. This position is emanating from the interaction of the following laws: -

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

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

H. RELIEFS SOUGHT -

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

to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.

PRAYER

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

- a. Permit Petitioner to recover 'Development Charge(s)' as per Annexure P-14 and Para 26, 27 & 28 stated herein above, from each of the prospective applicant(s) seeking new connections, a consumer seeking grant of additional load (situated within the Projects), subject to adjustment/refund (without interest) on curing deficiencies by the Delinquent Developers or payment of the cost thereof (in any of the manner mentioned below), so as to grant an immediate respite of granting connections/additional load to applicants/consumers within the Projects in the manner mentioned in Annexure P-14 or any other manner as this Hon'ble Commission may deem fit and proper;
 - b. Directions to the Respondent no. 1 to, forthwith: -
 - (i) Complete the electrical infrastructure of the project as per the approved layout.
 - (ii) Pay a sum of money either: -
 - (1) In cash deposit equivalent to the cost of curing the aforesaid inadequacies amounting to Rs.19.37 Crores, or
 - (2) By way of bank guarantee(s) of the cost of curing the aforesaid inadequacies to the Petitioner, and
 - (3) By way of transfer of an immovable property duly certified by DTCP to be of encumbrance free and of value equivalent to the cost of curing the aforesaid inadequacies;
 - c. Grant ad-interim/interim permission to the Petitioner in terms of the above prayer during the pendency of this Petition;
 - d. Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondents and punish each of the persons in-charge of Respondents' affairs with appropriate imprisonment and /or fine under Section 146 of the Electricity Act, 2003, as this Hon'ble Commission may deem fit; and
 - e. Pass any other order or order (s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.
2. The case was heard on 13/12/2023. The Commission observes with great concern that the respondents have not filed their reply to the petition filed by UHBVNL. Further, their representative appeared before the Commission, have not filed their power of attorney/ authority letter. In view of the above, the Commission directs the respondents to file power of attorney/letter of authority of their representatives. The respondents are further directed to file their reply within two weeks from the date of issuance of this order, with advance copy to the petitioner, failure to which Penalty of Rs. 25,000/- shall be imposed.
3. **Written Statement by RWA (R-2) dated 18/01/2024:**

The respondent no.2 most humbly and respectfully submit as under: -

- 3.1 That the contents of para no.1 of the petition are matter of record.
- 3.2 That the contents of para no.2 of the petition are matter of record.
- 3.3 That the contents of para no.3 of the petition are matter of record. However, the members and residents of answering respondent are ready to pay the amount on pro-rata basis as per the Rules and Regulations of the Electricity Act, 2003 in regard to providing supply and power on individual basis.
- 3.4 That the contents of para no.4 of the petition are not related to the answering respondent, hence need no specifically reply.
- 3.5 That the contents of para no.5 of the petition are admitted to being correct and the answering respondent also requesting to this Hon'ble Commission to allow UHBVN to release new electricity connection/additional load on voluntary payment of development charges by the residents of the project having inadequate electrical infrastructure by the respondent no.1.
- 3.6 That the contents of para no.6 of the petition are admitted and the same was also requested by the answering respondent by way of letter dated 28.07.2023 to file the present petition before this Hon'ble Commission.
- 3.7 That the contents of para no.7 of the petition are correct, hence, need no reply.
- 3.8 That the contents of para no.8 of the petition are admitted to the extent that the respondent no.1 is a developer of license residential plotted colonies, the Parsvnath City comprising two DTCP Scheme i.e. A-Block and Block-B having licence no.915-945 of 2006 and 878-894 of 2006. Rest of the contents of this para are matter of record.
- 3.9 That the contents of para no.9 of the petition are correct, hence admitted.
- 3.10 That the contents of para no.10 of the petition are correct, hence admitted.
- 3.11 That the contents of para no.11 of the petition are also correct.
- 3.12 That the contents of para no.12 of the petition are correct.
- 3.13 That the contents of para no.13 of the petition are correct.
- 3.14 That the contents of para no.14 of the petition are correct and the answering respondent also desires its need of getting new electricity connection/additional load on voluntary payment of development charges.
- 3.15 That the contents of para no.15 of the petition are matter of record.
- 3.16 That the contents of para no.16 of the petition are matter of record.
- 3.17 That the contents of para no.17 of the petition are matter of record.
- 3.18 That the contents of para no.18 of the petition are matter of record.
- 3.19 That the contents of para no.19 of the petition are also matter of record.
- 3.20 That the contents of para no.20 of the petition are matter of record.
- 3.21 That the contents of para no.21 of the petition are admitted to being correct.
- 3.22 That the contents of para no.22 of the petition are admitted to being correct.
- 3.23 That in reply to the contents of para no.23 of the petition it is submitted that the petitioner may kindly be strictly directed to utilize the amount recovered by the answering respondent on the creation of adequate

infrastructure in the said township and the money of the answering respondent may kindly be refunded from respondent no.1 as per the law.

- 3.24 That the contents of para no.24 along with sub paras no.(i) to (iv) of the petition are matter of record.
- 3.25 That the contents of para no.25 of the petition are correct hence admitted.
- 3.26 That the contents of para no.26 of the petition are matter of record to being the formula made by the department for computation of development charges, hence need no specifically reply.
- 3.27 That the contents of para no.20 of the petition are matter of record. However, the computation made by the petitioner, the petitioner be asked to put strict proof regarding to prove the calculation made is as per rules and the answering respondent is ready to pay the amount as per rules and regulations made by the Hon'ble Commissioner and as well as made by the government.
- 3.28 That the contents of para no.28 of the petition are not belonging to the answering respondent, hence, need no reply.
- 3.29 That the contents of para no.29 of the petition are admitted to being correct.
- 3.30 That the contents of para no.30 of the petition are legal.
- 3.31 That the contents of para no.31 of the petition are legal. That the contents of para no.32 of the petition are also legal.
- 3.32 That the contents of para no.33 of the petition are also legal.
- 3.33 That the contents of para no.34 of the petition are matter of record.
- 3.34 That the contents of para no.35 of the petition are matter of record.
- 3.35 That the contents of para no.36 of the petition are matter of record.
- 3.36 That the contents of para no.37 of the petition are not belonging to the answering respondent and the same are matter of record.
- 3.37 That the contents of para no.38 of the petition are legal.
- 3.38 That the contents of para no.39 of the petition are legal.
- 3.39 That in reply to the contents of para no.40 of the petition being prayer clause it is submitted that the answering respondent is requesting to this Hon'ble Commission to kindly allow the petitioner by granting interim relief for release of new connections to the answering respondent on the basis of voluntary payment of development charges on pro-rata basis.

In reply to sub para (a) to (e) it is submitted that the sub para no.(b), (c) and (e) are admitted and in reply to para no.(a) the computation made by the petitioner, the petitioner be asked to put strict proof regarding to prove the calculation made is as per rules and the answering respondent is ready to pay the amount as per rules and regulations made by the Hon'ble Commissioner and as well as made by the government and in reply to para no.(d), the respondent no.1 is solely responsible and liable for the punishment and penalty as per the Electricity Act, 2003 and Rules and Regulations made thereunder, in the interest of justice.

4. **Respondent (R-1) reply dated 19/01/2024**

PRELIMINARY SUBMISSIONS:

- 4.1 That electrification plan for Block-A and Block-B, Parsvnath City, Sonipat falling in Sector 8 and 9, Sonipat has already been approved by the Petitioner Nigam vide memo No. Ch-41/SE Mon./Elect. Plan/173/SNP/2022-23 dated 25.08.2022 and true copy thereof is annexed herewith.
- 4.2 That the Nigam has already raised a demand vide memo No. 1034 dated 07.06.2023 for making available land parcel of 02 Acres for creation of 33kV Substation. In pursuance to the aforesaid communication, vide memo No. Ch-56/SF/ Mon. Elect. Plan/173/ SNP/2022-23 dated 09.10.2023, land parcel of 2505.58 square meter has been approved by the Competent Authority for setting up of 33kV Substation infrastructure and true copy thereof is annexed herewith.
- 4.3 That the Answering-Respondent has already executed a gift deed for land measuring 04 Kanal 19 Marla (3000 square yards) falling in Village Kumaspur, Tehsil Sonipat for earmarked site No. ESS (AIS Based Substation) in Block-A, Parsvnath City. The said gift of land for setting up a 33kV AIS Substation has been accepted by UHBVN. The possession of the aforesaid land has already been handed over to the XEN (Operations) Sub Division, UHBVN, Sonipat. A true copy of the registered gift deed dated 12.10.2023 is annexed herewith.
- 4.4 That vide memo No.1033 dated 07.06.2023, UHBVN has raised a demand for submission of bank guarantee against the approved revised electrification plan for creation of complete electrical infrastructure in Parsvnath City, Block-A and Block-B in Sector 8, 9, 10 and 17, Sonipat. A true copy of the communication dated 07.06.2023 is annexed herewith.

REPLY ON MERITS: -

- 4.5 That the contents of paragraph No.1 of the petition are a matter of record.
- 4.6 That the contents of paragraph No.2 of the petition are denied for want of knowledge. Further, the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.7 That the contents of paragraph No.3 of the petition are denied for want of knowledge. Further, the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.8 That the contents of paragraph No.4 of the petition are denied for want of knowledge. Further, the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.9 That the contents of the corresponding paragraph do not pertain to the Answering-Respondent. The representation dated 27.07.2023 and 28.07.2023 are denied for want of knowledge. However, the Allottees may kindly be granted interim relief at this stage by providing them electricity connections.
- 4.10 That the contents of paragraph No.6 of the petition are a matter of record.

A. DETAILS OF PARTIES

- 4.11 That the contents of paragraph No.7 of the petition are a matter of record.
- 4.12 That the contents of paragraph No.8 of the petition are a matter of record.
- 4.13 That the contents of paragraph No.9 of the petition are a matter of record.
- B. CONSPECTUS OF THE PETITION
- 4.14 That the contents of paragraph No.10 of the petition are a matter of record.
- 4.15 That the contents of paragraph No.11 of the petition are denied for want of knowledge.
- 4.16 That the contents of paragraph No.12 of the petition are denied as incorrect. The Answering-Respondent has developed the colony and it has also been granted partial completion certificate vide memo No.LC-502 Vol.-II ATP-(SN)-2018/31711 dated 19.11.2018 for the licenced land measuring 36.995 Acres out of the total licenced land measuring 84.155 Acres falling under licence No.915-945 of 2006 dated 08.05.2016. A true copy of the partial completion certificate for land measuring 36.995 Acres is annexed herewith as Annexure R-1/5. The development works for the remaining land could not be completed on account of various defaults by the Allottees and the factors beyond the control of the Answering-Respondent. There is no wilful default on the part of Respondent No.1 as alleged in the corresponding paragraph of the petition.
- 4.17 That the contents of paragraph No.13 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.18 That the contents of paragraph No.14 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.19 That the contents of paragraph No.15 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.20 That the contents of paragraph No.16 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.21 That the contents of paragraph No.17 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.22 That the contents of paragraph No.18 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.23 That the contents of paragraph No.19 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to the Answering-Respondent.
- 4.24 That in reply to the contents of paragraph No.20 of the petition, it is submitted that the development works qua electrification could not be completed on account of various defaults by the Allottees and the factors beyond the control of the Answering-Respondent. There is no

wilful default on the part of Respondent No.1 as alleged in the corresponding paragraph of the petition. The Allottees may kindly be granted interim relief at this stage by providing them electricity connections.

4.25 That in reply to the contents of paragraph No.21 of the petition, it is submitted that the development works qua electrification could not be completed on account of various defaults by the Allottees and the factors beyond the control of the Answering-Respondent. There is no wilful default on the part of Respondent No.1 as alleged in the corresponding paragraph of the petition. The Allottees may kindly be granted interim relief at this stage by providing them electricity connections.

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

4.26 That the contents of paragraph No.22 of the petition are denied as incorrect. There is no wilful default on the part of Respondent No.1. The Allottees may kindly be granted interim relief at this stage by providing them electricity connections.

4.27 That in reply to the contents of paragraph No.23 of the petition, it is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations. The Allottees may kindly be granted interim relief at this stage by providing them electricity connections.

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

4.28 That in reply to the contents of paragraph No.24 of the petition, it is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.

4.29 That in reply to the contents of paragraph No.25 of the petition, for the sake of brevity, the submissions made hereinabove are reiterated.

E. COMPUTATION OF DEVELOPMENT CHARGES

4.30 That the contents of paragraph No.26 of the petition are a matter of record.

4.31 That the contents of paragraph No.27 of the petition are a matter of record as no response is required by Respondent No.1 to the corresponding paragraph of the petition.

4.32 That in reply to the contents of paragraph No.28 of the petition, it is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.

4.33 That in reply to the contents of paragraph No.29 of the petition, it is submitted that Respondent No.1 is committed to discharge all its

obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.

F. LEGAL FRAMEWORK

- 4.34 That the contents of paragraph No.30 of the petition are related to statutory framework and as such, do not require any response from Answering-Respondent No.1.
- 4.35 That the contents of paragraph No.31 of the petition are related to statutory framework and as such, do not require any response from Answering-Respondent No.1.
- 4.36 That the contents of paragraph No.32 of the petition are related to statutory framework and as such, do not require any response from Answering-Respondent No.1.
- 4.37 That the contents of paragraph No.33 of the petition are related to statutory framework and as such, do not require any response from Answering-Respondent No.1.
- 4.38 That the contents of paragraph No.34 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to Answering-Respondent No.1. There is no wilful default on the part of Respondent No.1. It is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.
- 4.39 That the contents of paragraph No.35 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to Answering-Respondent No.1. There is no wilful default on the part of Respondent No.1. It is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.
- 4.40 That the contents of paragraph No.36 of the petition are denied for want of knowledge as the contents of the corresponding paragraph do not pertain to Answering-Respondent No.1. There is no wilful default on the part of Respondent No.1. It is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.
- 4.41 That the contents of paragraph No.37 of the petition are a matter of record, insofar as sale circular No. U-21/2020 dated 18.09.2020 is concerned. Rest of the contents are denied as wrong. There is no wilful default on the part of Respondent No.1.

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

- 4.42 That in reply to the contents of paragraph No.38 of the petition, it is submitted that there is no wilful default on the part of Respondent No.1.

It is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.

4.43 That the contents of paragraph No.39 of the petition is the statutory interpretation of applicable statutory norms and as such, no response is required from Respondent No.1.

H. RELIEF SOUGHT

4.44 That the contents of paragraph No.40 of the petition are denied as wrong. It is reiterated that there is no wilful default on the part of Respondent No.1. It is submitted that Respondent No.1 is committed to discharge all its obligations in terms of statutory framework. However, on account of defaults by the Allottees and the factors beyond its control, there is inadvertent delay on the part of Respondent No.1 in discharging its obligations.

PRAYER:

It is therefore respectfully prayed that appropriate directions may kindly be passed in the interest of the consumers, however, considering that there is no wilful default on the part of Respondent No.1 and the delay in setting up of electrical infrastructure is beyond its control, proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 are not warranted in the facts and circumstances of the present case.

5. The case was heard on 31/01/2024, Ms. Aerika Singh, Advocate appearing for the petitioner reiterated the contents of the petition and submitted that various owners/occupants/residents of the Project are seeking new electricity connection/ additional load within the project area of the developer/respondent no. 1. However, due to non-creation of adequate electrical infrastructure by the developer, the petitioner is unable to cater to the demand of the distressed residents/ plot owners. She further submitted that a similar situation prevailed in the licensed area of DHBVN for which Petition no. 55 of 2021 was filed, wherein, the Commission passed an interim order dated 02.02.2022, permitting DHBVN to release new electricity connection/additional load on voluntary payment of proportionate charges. Accordingly, the petitioner in the instant petition is seeking an urgent relief for release of new connections to the new applicants/plot holders in the said project based upon development charges to be applicable up to 31.03.2024, which shall be enhanced by 10% every financial year thereafter. The new applicants of domestic category have the option to deposit proportionate "inadequacy charge(s)" in lump sum or in 12 EMI's (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills) and a rebate of 4% (four per cent) would be allowed to domestic applicants/consumers opting to deposit proportionate charges in lump sum in one go. Sh. Brajesh Singh, counsel for the respondent no. 1 submitted that the reply has been filed in compliance of the order dated 13/12/2023. However, he submitted that he has no objection to the

release of connections to the residents as per proposal of the petitioner. The Counsel for RWA submitted that the RWA has already submitted their willingness on the proposal of the DISCOMs for release of connection to the owners/residents who are willing to voluntarily deposit the proportionate charges against inadequacies. In the given circumstances, the Commission recalls its earlier order dated 02.02.2022 (in P.No.55 of 2021) wherein the Commission as an ad-interim measure while aiming to resolve the needs of the distressed persons/applicants, who were in an urgent need of the electricity connection/additional load and voluntarily opt to pay the proportionate inadequacy charges, allowed the licensee to release new electricity connections/additional load on voluntary payment of calculated charges by the residents of project, having inadequate electrical infrastructure by the respondent developers. Accordingly, the Commission as an ad-interim measure to help out the distressed residents, allows the petitioner to release the additional load/new connection to the prospective applicant(s) situated within the Project on voluntary payment of proportionate charges equivalent to the inadequacy of the developer as mentioned in the petition, subject to adjustment/refund (without interest) on curing deficiencies by the delinquent developers or payment of cost thereof. Further, the petitioner is directed to keep a record of the charges paid by the applicant(s) seeking release of new connection/additional load in the Project area and make the same available to the Commission as and when directed to do so. In case, the petitioner recovers the cost of the claimed inadequacies, the aforesaid charges voluntarily paid by the above applicants shall be adjusted/set off in their future energy bills. The commission directs the petitioner to file its rejoinder on the averments made by respondents.

6. Rejoinder on behalf of the Petitioner, Uttar Haryana Bijli Vitran Nigam received on 18/03/2024:

6.1 The present rejoinder is being filed on behalf of Uttar Haryana Bijli Vitran Nigam Limited/Petitioner ("UHBVN) as response to the reply filed by the Respondent in the above captioned petition. The Petitioner denies all and singular allegations, contentions and submissions of the Respondent except those that are matters of record and/or specifically admitted herein.

RE: PRELIMINARY SUBMISSIONS

6.2 The Petitioner has filed the instant petition seeking directions to the Respondent no. 1 to complete the electrical infrastructure of the project as per approved layout and to deposit adequate amount equivalent to the cost of curing the inadequacies in the electrical infrastructure obligated to be developed by the Respondent no. 1.

6.3 At the outset, it is pertinent here to mention that in the Reply, the Respondent no. 1 has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the correct of the amount of inadequacy computed by the Petitioner except evasive denials to the contents of the Petition. The only

case put forth by the Respondent no. 1 is that they could not complete their obligations of development of electrical infrastructure as per the sanctioned electrification layout owing to the defaults of the Allottees and the factors beyond their control. In the entire reply, what to talk of substantiation of the contentions, the alleged defaults of the allottees and the alleged factors beyond their control have not been explained. As such, the Respondent no. 1, in essence has admitted their defaults and the obligation to pay the amount of inadequacy. The Hon'ble Commission may therefore, pass appropriate directions in the matter as prayed for by the Petitioner.

- 6.4 A perusal of the contents of the reply and an analysis of the annexures annexed to the reply amply clarifies the contentions of the Petitioner. Paragraph 2 of the letter of the Petitioner dated 07.06.2023 categorically states that "the suitable piece of land as per Nigam's norms will be transferred to UHBVN and work will be executed in FY 2023-2024. But it is regret to mention here that till now neither the suitable land for 33KV power house allocated to UHBVN nor any infra work started for the creation of said 33 KV S/Stn. in Pocket-A." Further, the Respondent no. 1 was asked to deposit the Bank Guarantee, as is evident from perusal of letter of the Respondent dated 07.06.2023 (Annexure R-1/4). However, no heed at all was paid to the legitimate requests of the Petitioner.
- 6.5 The Respondent no. 1 has further averred that they have transferred the land for creation of electrical substation to the Petitioner. Mere transfer of land does not absolve the Respondent no. 1 of its obligations which are governed under contractual and statutory framework. The Respondent no. 1 is liable to bear the cost of the electrical infrastructure, for which the present Petition has been filed.
- 6.6 The Electrification Scheme/Plan sanctioned by the Respondent is prepared as per the regulatory framework notified by this Hon'ble Commission. As per the said electrification plan, the total load is approved for the project and the same was to be fed from the electrical infrastructure to be constructed by the builder, for which conditions are also stipulated in the order in consonance with the regulatory framework. The conditions of electrification plan are an obligation of the developer and any defaults in fulfilment of such obligations affects the quality, continuity and reliability of power supply, which is to be regulated by this Hon'ble Commission.
- 6.7 Lack of adequate electrical infrastructure causes serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under: (a) On one hand, under applicable provisions of the Electricity Act, 2003 read with the Duty to Supply Regulations and Supply Code, the Petitioner, in law, neither release new connections to the buyers of such premises nor sanction additional load to existing consumers owning such premises on account of existing deficiencies in installed electrical infrastructure. (b) On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure. Thus, the Petitioner cannot in law take over such deficient infrastructure for maintenance, adversely affecting the quality

- and reliability of the supply of electricity.
- 6.8 Developers are obliged in law as well as contractually to install such electrical infrastructure as may be adequate to cater the 'ultimate load' within the area developed by them. If these delinquent Developers do not install such adequate electrical infrastructure, the cost thereof shall have to be borne by the consumers within the Projects developed by such developers. This position is emanating from interaction of the various laws such as:-
- i. The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules");
 - ii. Electricity Act, 2003;
 - iii. Duty to Supply Regulations;
 - iv. Supply Code; and
 - v. Single Point Supply Regulations.
- The issue of inadequacies has time and again been brought before the Commission in various cases. In pursuance to the power given to Distribution Licensee under Regulation 4.1 of the Duty to Supply Regulations and similar such provisions under various regulations, the Hon'ble Commission has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.
- 6.9 It is further submitted that shifting delay responsibilities does not absolve the Respondent no.1 of its liabilities, as the main grievances cited in the petition still persists i.e. delay on the part of the Respondent no.1 in development of adequate electrical infrastructure and in submission of Bank Guarantee.
- 6.10 In light of the foregoing submissions, it is prayed that the Hon'ble Commission may kindly issue appropriate directions to the Respondent no. 1 to complete the work as per approved electrification plan in a time bound manner along with submission of the monthly progress report to the Hon'ble Commission and to the Petitioner.

Rebuttal to PARAWISE REPLY -

In so far as parawise reply is concerned, the contents which have been stated to be matter of record, calls for no specific rebuttal. In reply to rest of the contents of the petition, the Respondent no. 1 has merely reiterated the Preliminary Submissions, which have been adequately dealt with hereinabove. As such, the submissions made above are reiterated as part to rebuttal to para wise reply of the Respondent no.1. It is pertinent here to mention that in the Reply, the Respondent no. 1 has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the correct of the amount of inadequacy computed by the Petitioner except evasive denials to the contents of the Petition. As such, in light of the foregoing submissions, the reliefs sought for in the instant petition are liable to allowed. The Respondent shall be directed to bear the cost of development of electrical infrastructure in a time bound manner and complete the balance electrical infrastructure and duly handover the

same to the Petitioner. The reply to paragraphs of the 'Reply to Petition' is denied except what is a matter of record and contents of petition are reiterated for the sake of brevity.

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

7. The case was heard on 20/03/2024, Ms. Sonia Madan, Advocate appearing for the petitioner submitted that rejoinder has been filed. Sh. Brajesh Singh counsel for the respondent submitted that the copy of the rejoinder has been received two days back and requested for short adjournment to file the counter reply to the rejoinder. Acceding to the request of the respondent-developer, the Commission adjourns the matter and directs the respondent-developer to file its reply within two weeks with an advance copy to petitioner.
8. The case was heard on 15/05/2024, None appeared on behalf of the respondents. Ms. Sonia Madan, Advocate appearing for the petitioner submitted that the respondents have not submitted any reply to the rejoinder till date. The Commission observes that another opportunity is required to be given to respondent developer to file reply. The Commission adjourns the matter and directs the respondent-developer to file its reply with in two weeks with an advance copy to petitioner.
9. The case was heard on 19/06/2024, None appeared on behalf of the respondents. Ms. Ayushi Garg, Advocate, appearing for the petitioner, submitted that the respondent has not filed any response to rejoinder till date and the petitioner has no objection if a last opportunity is granted to the respondent to file the reply. Ms. Garg further sought a short adjournment as the arguing counsel Ms. Sonia Madan could not appear due to fracture in her leg. Acceding to request of the petitioner, the Commission adjourned the matter for arguments on next date. The Commission observes that ample opportunity has already been given to respondent to file reply but to no avail and decides that a registered notice be issued to the respondent to be present for arguments on next date of hearing, failing which the matter shall be heard and decided Ex parte.
10. The case was heard on 07/08/2024, Ms. Rupali Shekhar Verma counsel appearing on behalf of the respondent requested for short adjournment as the arguing counsel was not available. The Commission expressed its displeasure over the non-appearance of the respondents on previous hearings and the counsel is still seeking short adjournment. Ms. Sonia Madan, counsel for the petitioner, submitted that there will be some revision in the inadequacy amount due to latest revision of the load norms and requested for some accommodation so that the revised amount could be conveyed to the respondent. Acceding to the request of the petitioner, the Commission adjourned the matter and directed the petitioner to file revised amount of inadequacy within 2 weeks with an advance copy to the respondent no. 1 and thereafter, the respondent no. 1 may file their response if any, within one week.
11. The case was heard on 04/09/2024, Ms. Sonia Madan counsel for the

petitioner submitted the revised calculation of the inadequacy amount as per revised load norms circulated vide Sales Circular No. U-25/2024 dated 26.07.2024 and served a copy to the counsel of the respondent-developer. Ms. Rupali Shekhar counsel for the respondent-developer requested for short adjournment as the intimation of revised inadequacy amount has been received today only and the instructions of the client are required on the same. The Commission observes that the matter is already over delayed and hence, if the parties are willing to settle the matter mutually through reconciliation, they are free to do same before the next date of hearing and submit the report in the Commission otherwise final arguments will be heard on next date. The Commission adjourns the matter with directions to both the parties to be present for final arguments on the next date of hearing.

12. **Revision of Inadequacy amount on 04/09/2024:**

As per revised load norms, there is no change in the residential load for Sonipat city. However, there is a slight change in load calculation for commercial areas. As a result, the Inadequacy amount has been slightly varied from Rs. 19.37 Cr. to Rs.19.91 Cr.

13. The case was heard on 23/10/2024, Ms. Sonia Madan counsel for the petitioner re-iterated the contents of the petition and submitted that the respondent developer has provided the land parcel for construction of 33 kV sub-station but has neither created the requisite infrastructure including 33 kV sub-station nor submitted the requisite bank guarantee of Rs. 19.91 Cr. Ms. Rupali Shekhar counsel for the respondent-developer objected the averments of the petitioner and argued that the inadequacy amount has been calculated ignoring the land price. The developer is facing a funds crunch due to default by the allottees. Further the present petition is not maintainable. Ms.Sonia Madan objected to the argument of non-maintainability and submitted that the same has not been raised in the reply submitted by the respondent and the counsel of the respondent cannot argue on any new point which has not been brought on record earlier. The Commission observes that ample opportunity was provided to the respondent developer to bring on record all the facts and figures of the case and the counsel of the respondent developer is arguing on the points which have not been brought on record earlier. The counsel for the respondent-developer requested to allow submission of written arguments. Acceding to request of the respondent-developer, the Commission allowed to submit the written arguments with in one week with an advance copy to the petitioner and petitioner to submit its rebuttal, if any, with in one week thereafter.

14. **Written Submissions of respondent dt. 23/10/2024:**

14.1 MAINTAINABILITY OF THE COMPLAINT: -

- i. The premise of the submissions made herein above is that this Hon'ble Commission or for that matter Distribution Licensee are not privy to the conduct of the Allottees in default and other factors

beyond the control of the Promoter/Colonizer. Once that is so, the Promoter/Colonizer cannot even put across its grievance before this Hon'ble Commission, which it has against the errant Allottees and other factors, which has contributed to the present situation.

- ii. The complaint has been filed by the Distribution Licensee for recovery of the inadequacy amount of Rs.19.91 Cr. Furthermore, a prayer has been made before recovery of development charges and lastly, for a direction to the Promoter/Colonizer for completion of electrical infrastructure of the project as per the approved layout plan.
- iii. The complaint has been filed in terms of Section 43, 46 and 50 read with Section 142 and 146 of the Electricity Act, 2003.
- iv. The provisions invoked by the Distribution Licensee/Petitioner nowhere provide for the issuance of directions/recovery of the dues as claimed through this Hon'ble Commission.
- v. The aforesaid provisions and more specifically Section 46 of the Electricity Act, 2003 read in conjunction Regulation 4 and 6 of the Haryana Electricity Regulatory Commission (Duty to Supply Electricity on Request, Power to recover Expenditure Incurred in Providing Supply and Power to Require Security, 2016) only provide that a Distribution Licensee shall be entitled to recover certain expenses. However, the mode of recovery is not provided in the 2003 Act or the 2016 Regulation.
- vi. That in absence of the mode of recovery, it is clear that the alleged charges cannot be recovered through this Hon'ble Commission and more so for the reason that the language of Section 43 makes it abundantly clear that the duty to supply electricity is based on the obligation to pay the charges. In case, the charges are not paid by the consumer/owner, they shall be no obligation on the part of the Distribution Licensee to supply the electricity.
- vii. Section 43 cannot be read to mean that every consumer/ owner of the premises shall pay electricity charges/dues and if not paid, the same can be recovered through this Hon'ble Commission. If there is a default on the part of any consumer or owner of the premises for any reason whatsoever, the Distribution Licensee will not supply the electricity.
- viii. The submissions on behalf of the Respondent are also fortified, if Regulation 6 and 7 of 2016 Regulation are read in conjunction with Section 43 of the 2003 Act. The alleged default cannot be set right through this Hon'ble Commission. There are no parameters or the mandate to execute a pure bilateral contract between the Distribution Licensee and the Consumer/Owner.
- ix. That this Hon'ble Commission would have no power/jurisdiction to adjudicate the alleged default insofar as, the obligations arising from the terms and conditions of the grant of license by the Director General, Town and Country Planning or for that matter bilateral Builder Buyer Agreement executed between the Allottee and the Promoter.

- x. As on date, the Allottees have paid the dues of the Distribution Licensee and they have been granted connection. The dispute if any is between the Promoter and the Allottees.

14.2 MAINTAINABILITY OF PRAYER IN TERMS OF SECTION 142 AND 146 OF THE ELECTRICITY ACT, 2003: -

- i. A perusal of Section 142 and 146 of the Electricity Act, 2003 would show that the penal provisions are essentially directed against the Distribution Licensee and its officials.
- ii. The word used is that “any person” aggrieved can file a complaint under Section 142 read with Section 146 of the Electricity Act, 2003.
- iii. The term “person” is defined under the Electricity Act, 2003 and is the 2016 Regulation as under: -
Electricity Act, 2003:
2(49) “person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.”

Haryana Electricity Regulatory Commission, 2016:
2(37) “Person” means any person/persons or occupier or possessor of a premises or place who may or may not be a consumer and shall include any company or body corporate or association or body of individuals, whether incorporated or not, or an artificial juridical person;”
- iv. A bare perusal of the definition of the term person would show that Distribution Licensee is not included in the definition of person and it is only the end user who are entitled to invoke these penal provisions against the Distribution Licensee for violation of the directions passed by this Hon’ble Commission.
- iv. That insofar as, the present Promoter/Colonizer is concerned, it is humbly submitted that there is no violation of the directions rendered by this Hon’ble Commission much less wilful violation.
- v. It is humbly submitted that the present situation is on account of contribution of various factors beyond the control of the Promoter/Colonizer and all these factors are not covered or catered to by the Electricity Act 2003 and or the regulations framed therein by this Hon’ble Commission. Therefore, powers under Section 142 and 146 of the Act 2003 cannot be invoked against the Promoter/Colonizer in the facts and circumstances of the present case.

PRAYER:-

It is therefore respectfully prayed that the present petition is liable to be dismissed.

15. **Written Submissions Petitioner dt. 05/11/2024:**

The Respondent, in their written submissions, has raised an issue on the maintainability of the Petition and maintainability of Prayer in terms of Section 142 and 146 of the Electricity Act, 2003. The Respondent has

contended that the Hon'ble Commission does not have the jurisdiction to issue directions to recover the dues claimed through the petition, inasmuch as the mode of recovery of such dues / expenses is not provided in the Electricity Act, 2003 or the Supply Regulations.

A. ARGUMENTS ON MAINTAINABILITY OF PETITION -

15.1. At the outset, it is submitted that this Hon'ble Commission is empowered under Section 46 of the Electricity Act, 2003 (**'the Act'**) to frame regulations to authorize a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and plant are defined under section 2(20) and 2 (22) of the Act. The relevant provisions delineating the power and jurisdiction of this Hon'ble Commission to issue directions to recover costs / expenses for supply of electricity are reproduced hereinbelow for ready reference:

Section 43 (Duty to supply on request)

"1. Save as otherwise provided in the Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premise, within one month after receipt of the application rearguing such supply. Provided that where such supply requires extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

...

Section 45 (Power to Recover Cost)

- (1) Subject to this section, the prices to be charges by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.*
- (2) The charges for electricity supplied by a distribution licensee shall be— (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission; (b) published in such manner so as to give adequate publicity for such charges and prices.*
- (3) The charges for electricity supplied by a distribution licensee may include—
(a) a fixed charge in addition to the charge for the actual electricity supplied;
(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee....*

Section 46. (Power to recover expenditure):

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in

providing 39 any electric line or electrical plant used for the purpose of giving that supply.” (emphasis supplied)

Section 2 (20) "electric line" means any line which is used for carrying electricity for any purpose and includes – (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity;

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

(a) an electric line; or

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical equipment, apparatus or appliance under the control of a consumer;”

It is pertinent to note that an appropriate “Electrical Line” and “Electrical Plant” make part of the adequate electrical infrastructure that is required to achieve the ultimate load of a particular sanctioned area.

- 15.2. It is submitted that in terms of Section 46 of the Act, as is mentioned above, this Hon’ble Commission has framed the Haryana Electricity Regulatory Commission Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security Regulations, 2016 (“2016 Regulations”). The Hon’ble Commission’s power to adjudicate the present issue also arises from a bare reading of Regulation 4.1 of 2016 Regulations, which empowers the Petitioner to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.1 reads as under:

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

(Emphasis supplied)

- 15.3. Further, in context of recovery of charges by a licensee, Section 50 of the Act requires that the State Commission shall specify an electricity supply code to provide for recovery of these charges. Section 50 of the Act is being reproduced hereunder for ready reference:

Section 50. (The Electricity supply code).

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of

electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.”
(Emphasis supplied)

- 15.4. Pursuant thereto, this Hon'ble Commission has framed the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 (“*Supply Code*”). Provisions similar to what have been discussed in the preceding paragraphs, as contained in Duty to Supply 2016 Regulations exist in the Supply Code as well.
- 15.5. Regulation 4.6 of the 2016 Regulations provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer.
- 15.6. Regulation 4.2.3 of Supply Code provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by this Hon'ble Commission under Section 46 of the Act. This stipulation is exactly same as that of Regulation 4.6 of the 2016 Regulations.
- 15.7. The 2016 Regulations further empowers this Hon'ble Commission vide Regulation 8 to issue directions and pass orders as considered appropriate for implementation of these Regulations.
- 15.8. In view of the foregoing broad legal framework, the Electrification Plan is prepared for the projects licensed by the Department of Town and Country Planning, Haryana. Such Electrification Plans are prepared considering the load requirement commensurate with the envisaged development. The obligation for cost of laying of electrical infrastructure is that of the Developer, which forms a component of the total project cost. With approval of the Electrification Plant, the builder becomes the applicant for seeking power supply to their project and become bound to bear the cost of electrical infrastructure necessary to provide power supply to their project. In the event such cost is not recovered from the Developer, the same shall have to be passed through the Annual Revenue Requirement of the Respondent Nigam thereby burdening the consumers at large without providing any direct benefit to them. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the Developer/Builder

emanating from the regulations of the HERC which has a statutory force. Completion of such electrical infrastructure is essential for the licensee to provide reliable, continuous and quality electric supply to the residents of the State.

15.9. The relevant regulations notified by the Hon'ble Commission, which obligates Developer to create Electrical Infrastructure are reproduced hereunder for ready reference –

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

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

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

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

(c) The aforesaid execution plan for installation of complete Electrical Infrastructure by the Developer may be executed in maximum 4 (four) phases spanning over a period of 5 (five) years or such executed in other extended period as may be deemed fit by the Distribution Licensee. Provided, in case of development of large area (50 Acre or above) the phases for execution may be six spanning over period of 10 years including extension granted by the appropriate authority. Provided that, the land which constitutes a phase declared by the Developer shall be contiguous and one single piece of land.

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

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

notice requiring the Developer to submit a BG within 30 (thirty) days equivalent to the estimated cost of the work for installation of the Electrical Infrastructure necessary to meet the demand of such subsequent phase of the aforesaid execution plan.

Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020.

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

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

Provided that in case of Developer/Users Association covered under Regulation 4.1 or 5.2, the distribution licensee shall ensure, before release of Single Point Supply connection, that the Developer has completed the installation of entire electrical infrastructure within its complex as per the approved electrification Plan.

Provided, if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incompleting work as per regulation 4.12 of HERC Duty to Supply Electricity on request, Power to recover expenditure incurred in providing supply and Power to require Security Regulations, 2016 as amended from time to time. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.

Provided further, that on completion of the electrical infrastructure by the Developer, the operation and maintenance of these assets shall be

handed over to the RWA/Users Association and the Single Point Supply connection if any taken by the Developer shall be got transferred/changed in the name of RWA/Users Association along with all the securities deposited with the distribution licensee and other guarantee/warranty of the electrical equipments installed.

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

The foregoing regulations clearly obligates the Developer to execute the work of electrical infrastructure in their project area. In view of the foregoing regulations, it was incumbent upon the Respondent to have got the revised Electrification Plan approved, submit Bank Guarantee and take steps for completion of work as per approved Plan. Admittedly, the Respondent failed to do so and has contravened the regulation. The Hon’ble Commission can pass appropriate orders to ensure that the regulations are implemented and are not violated by the Developers.

15.10. The belated objection *qua* absence of mode of recovery of dues in the regulatory framework, raised by the Respondent is bereft of merit. The Respondent is wrongly interpreting the provisions of the Act in isolation whereas the provisions of the same have to be inferred harmoniously and in conjunction with the Regulations framed thereunder. If the argument of the Respondent is accepted, the provisions of Supply Code, Duty to Supply Regulations and the Electrification Plan approved thereunder would be rendered meaningless.

15.11. Even otherwise, this Hon’ble Commission has jurisdiction to adjudicate on the present issue and issue directions to recover the expenses under section 86 (1) (i) and (k) of the Act, which stipulates the function of a State Commission to enforce standards with respect to quality, continuity and reliability of service by licensee and to discharge functions as it may be assigned to it under this Act. The relevant provision is reproduced herewith for ready reference:

“Section 86. (Functions of State Commission): ---

(1) The State Commission shall discharge the following functions, namely: - ... (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees

(k) discharge such other functions as may be assigned to it under this Act.”

(Emphasis supplied)

15.12. In view of the foregoing, the Respondent’s objection that the regulatory framework does not spell out the Hon’ble Commission’s jurisdiction to issue directions to recover the dues/expenses falls flat, as the provisions of the Act read in conjunction with the Regulations framed thereunder (also reproduced above), clearly establish the Hon’ble

Commission's jurisdiction to issue directions necessary for the recovery of dues and expenses incurred by the Distribution Licensee in providing electrical supply to consumers. The statutory framework unequivocally entrusts the Hon'ble Commission with the authority to ensure compliance and facilitate the recovery of legitimate expenses as part of the Distribution Licensee's operational obligations to provide service.

15.13. It is the right of the Distribution Licensee to recover the dues/ expenses which is relevant and material, and the said right of the Distribution Licensee is clearly spelled out in the Act and the Regulations framed thereunder. The Petitioner has clearly specified the amount of inadequacy, which is computed in line with prevalent load norms. The mode of payment of such inadequacy is the obligation of the Developer. Section 86(1)(i), 86(1)(k), 43, 45, 46, 47 and 50 of the Electricity Act read with provisions of the Supply Code and 2016 Regulations empowers Hon'ble Commission to take appropriate action against the delinquent developer, who fails to meet their obligations stipulated in foregoing provisions and issue appropriate directions or pass orders in relation thereto.

15.14. Furthermore, this Hon'ble Commission has time and again taken cognizance of the issue of builder inadequacy by rightly exercising its powers under the Act as well as the regulations in force. The Hon'ble Commission, vide judgments rendered in a plethora of similarly situated cases, has held that the Delinquent Developer is liable to cure the electrical inadequacy and furnish Bank Guarantee for the incomplete works, which is also the issue and facts of present case. Reference may be had to the following cases / judgments passed by this Hon'ble Commission in this regard-

- a. Dakshin Haryana Bijli Vitran Nigam v. M/s Sheetal International Pvt. Ltd. Order dated 07.05.2024 (Petition No. 44 of 2022 before HERC)- It was held that the Commission has the jurisdiction to issue directions as well as to remove difficulties for the implementation of the Regulations. It was further held that the Commission has jurisdiction to adjudicate on the issue under Section 86 (1) (i) and (k) of Electricity Act, 2003 which stipulates the function of a State Commission to enforce standards with respect to quality, continuity and reliability of service by licensee and to discharge functions as it may be assigned to it under the Act
- b. Dakshin Haryana Bijli Vitran Nigam v. M/s Malibu Estates Pvt. Ltd. Order dated 29.02.2024 (Petition No. 41 of 2022 before HERC)- This Hon'ble Commission took cognizance of the inadequacies in the project and directed the Delinquent Developer to cure the same and furnish a Bank Guarantee to the Distribution Licensee for the pending work. It was noted by this Hon'ble Commission that the Commission has the jurisdiction under section 86 (1) (i) and (k) of the Act to discharge any functions assigned to it under the Act.

- c. *Dakshin Haryana Bijli Vitran Nigam v. M/s. Ansal properties and Infrastructure and Anr.* Order dated 02.02.2022 (Petition no. 55 of 2021 before HERC)- this Hon'ble Commission took cognizance of a similar matter and permitted the Distribution Licensee to release the new electricity connections/additional load on voluntary payment of development charges as an ad-interim measure and directed the Distribution Licensee to keep a record of the charges paid by the applicants seeking release of new connection/additional load in the areas developed by Respondents therein and to make the same available to the Commission as and when directed to do so.
- d. *Anandvilas 81 Resident Welfare Association v. DHBVNL* Order dated 09.08.2021 (Petition no. 48 of 2020 before HERC)- This Hon'ble Commission held that it is obligatory on the part of developer (License Holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of electrical infrastructure for the licensed area before release of electrical connection for which compliance is required to be made by developer
- e. *Ansal Buildwell v. DHBVNL &Ors.* Order dated 20.02.2015 (Petition No. 21& 23 of 2013 before HERC)- This Hon'ble Commission adjudicated on the issue of jurisdiction and decided that that the Commission has the jurisdiction to decide such issues as raised in the present petition. The Hon'ble Commission directed the Delinquent Developer to cure the electrical inadequacy, which is also the issue involved in the present case.
- 15.15. It may not be out of place to state that vide the foregoing judgments, this Hon'ble Commission rightly exercised its jurisdiction, and has already adjudicated on the issue of inadequacy and the obligation of the builders and developers to that extent.
- 15.16. It is further relevant to refer to the judgment dated 19.05.2023 passed by the Hon'ble Supreme Court in *K C Ninan v. Kerela State Electricity Board &Ors, (Civil Appeal No 2109-2110 of 2004)*, wherein it was held that the duty of the Distribution Licensee to supply electricity under Section 43 of the Act, 2003 is subject to charges and compliances to be made by the consumer. Further, in *UPPCL v NTPC (2009)6 SCC 235*, the Hon'ble Supreme Court held that a Regulatory Commission not only makes Regulations in view of its extensive powers, but is also in-charge of implementation thereof. Thus, the right of the Distribution Licensee to recover the expenses / dues for supply of electricity and this Hon'ble Commission's power/jurisdiction to issue necessary directions for recovery thereof is well established and enshrined in the regulatory framework.
- 15.17. In addition to the foregoing, the Bilateral Agreement between Director General, Town and Country Planning, Haryana, (DTCP) and Builders

also stipulates that it shall be the responsibility of the Developer for installing adequate electrical infrastructure in the areas for which they have been granted permission for development. The relevant condition of the bilateral agreement reads as under:

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

B. ARGUMENTS ON MAINTAINABILITY OF PRAYER IN TERMS OF SECTIONS 142 AND 146 OF THE ACT-

- 15.18. The Respondent has wrongly contended that Sections 142 and 146 of the Act are penal provisions essentially directed against the Distribution Licensees and its officials, and hence, the Petitioner cannot invoke these penal provisions. Such contentions of the Respondent are entirely contrary to object and intent of the Act, inasmuch as Sections 142 and 146 of the Act encompass powers of the Commission to penalize any person who contravenes any provisions of the Electricity Act and regulations framed thereunder. The object and purport of the aforesaid provisions are to ensure compliance of the provisions of Act and the Commission’s Regulations.
- 15.19. Furthermore, it is wrong to state that the Distribution Licensee does not fall under the definition of ‘Person’ under the Act. A perusal of the definition of ‘Person’ stipulated under Section 2(49) of the Act and the 2016 Regulations evinces that it is an inclusive definition, which includes any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person. The Petitioner, being a Distribution Licensee that is a Company registered under the Companies Act, 1956, falls under the definition of ‘Person’, and is entitled to invoke the penal provisions against the Respondent.
- 15.20. It is further submitted that in the instant case, the Respondent no. 1 has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the amount of inadequacy computed by the Petitioner. Even the alleged defaults of the allottees and the alleged factors beyond their control have not been explained by the Respondent. Hence, the default on the part of the Respondent essentially stands admitted and the reliefs sought in the petition are to be allowed. The Hon’ble Commission has ample power to

issue such directions as have been sought by the Petitioner, and the issuance of said directions is necessary to ensure the supply of electricity, which is a basic amenity.

C. In addition to the foregoing submissions, it is also apposite to set out hereunder the Powers of the Commission enshrined under Section 86 of the Electricity Act, 2003 ('Act') –

- a) Section 86 of the Electricity Act, 2003 empowers Hon'ble Commission to exercise adjudicatory, regulatory as well administrative functions so as to give effect to the intent and purpose enshrined under Electricity Act, 2003 as a Regulatory Body.
- b) Section 86(1)(i) and (k) empowers to specify or enforce standards with respect to quality, continuity and reliability of service by licensees and to discharge functions as it may be assigned to it under this Act.
- c) Proviso to S. 43 (1) of the Electricity Act, 2003 provides that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning within period "*as may be specified by the appropriate commission*".
- d) Under Section 46, a distribution licensee is empowered to charge from any person who seeks supply of electricity any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving electricity. Section 47 empowers the distribution licensee to seek a reasonable security from any person who requires supply under Section 43. Under Section 48, a distribution licensee may require the applicant, who requires a supply of electricity in pursuance of Section 43, to accept any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under Section 53. Further, Section 50 empowers the State Electricity Regulatory Commission to specify an Electricity Supply Code providing for recovery of electricity charges, *amongst* other things. Regulation 4.2.3 of the Supply Code provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by HERC under Section 46 of the 2003 Act. A conjoint reading of the foregoing legislative provisions evinces that the cost of development of distribution electrical infrastructure and supply has to be regularized and the recovery of cost thereof has to be made from the beneficiaries. Such cost has to be recovered in a manner that no consumer is incentivized at the cost of others.
- e) The power of the licensee to ensure quality, continuity and reliability of service is governed by various regulations notified by the Commission.

- f) The Electrification Scheme/Plan is prepared as per the regulatory framework notified by Commission and is a document governed by the jurisdiction of Commission.
- g) As per the electrification plan, the total load is approved for the project and the same was to be fed from the electrical infrastructure to be constructed by the builder, for which conditions are also stipulated in the order in consonance with the regulatory framework. The conditions of electrification plan are an obligation of the developer and any defaults in fulfilment of such obligations affects the quality, continuity and reliability of power supply, which is to be regulated by Commission.
- h) Regulation 4.12 read with Regulation 3.10 of the Duty to Supply Regulations, the liability to bear cost of distribution system etc. shall be rightfully borne by the builder, who develops a project and assures to provide all essential amenities to the consumers of such project.
- i) Developer is bound to bear the cost of electrical infrastructure to be installed as per electrification plan sanctioned under the Supply Code. Regulation 3.10 and 4.12 of the Duty to Supply Regulations obligates Developer to lay down electrical infrastructure.
- j) Regulation 4.2.3 read with Regulation 4.2.4 of the Supply Code also provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing shall have to be borne by the aforesaid developers/builders.
- k) It emanates from the statutory provisions as well as the regulations framed thereunder that once a builder/developer has chosen to install electricity infrastructure on its own, it is the bounden duty of the developer in terms of the extant regulations to ensure that such infrastructure is adequately installed, and the Distribution Licensee is entitled to recover appropriate expenses directly from the Developer for all electrical works and supply of electricity. Considering the basic and overriding purpose of Electricity Act, 2003 being ensuring generation of electricity and efficient equitable distribution thereof with the interest of the consumers in mind, the Commission has full jurisdiction to regulate issues concerning distribution of electricity and other necessary concomitance thereto.

In view of the foregoing, it is submitted that this Hon'ble Commission has the power to issue necessary directions and grant the reliefs as prayed for in terms of the Regulatory Framework. The Respondent shall be directed to bear the cost of electrical infrastructure or develop the same in a time bound manner and handover the same to the Petitioner.

16. Short Rebuttal of respondent thru email dt. 07/11/2024:

16.1 That the plea as regards belated objection to the jurisdiction of this Hon'ble Commission is incorrect. The objection is with regard to the 'subject matter' being beyond the powers conferred upon this Hon'ble Tribunal is maintainable at any stage. In this regard, the Respondent would rely upon (2008) 2 SCC 350 titled as "Chief Engineer, Hydel

Project and Others Versus Ravinder Nath and Others” and the operative part of the judgment is reproduced as under:

In our considered opinion, it cannot be said that there was no question of law involved as we have pointed out that the issues squarely fell in the area covered by the Industrial Disputes Act and were, therefore, specifically barred. The question is whether this issue regarding the jurisdiction could be allowed to be raised before us. The question of jurisdiction came up before this Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. [(2005) 7 SCC 791] The Court therein was considering the question raised whether the Court had jurisdiction under Section 16(d) CPC to deal with the matter in question. In short the Court was considering whether the amendment could have been allowed raising objection to the territorial jurisdiction. This Court in para 30 observed as under: (SCC pp. 803-04)

“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-- matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.”

25. The Court then proceeded to rely on Bahrein Petroleum Co. Ltd. v. P.J. Pappu [AIR 1966 SC 634 : (1966) 1 SCR 461] and observed in para 32 that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. The Court further observed that: (Harshad Chiman Lal case [(2005) 7 SCC 791] , SCC p. 804, para 32)

“32. ... It is well settled and needs no authority that ‘where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing’. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.”

- 16.2 That in any case, having availed the opportunity to respond to the objection of the Respondent as regards jurisdiction, this plea is no longer available to the Nigam.
- 16.3 That insofar as, the judgment in UP Power Corporation Limited Versus National Thermal Power Corporation Limited reported as (2009) 6 SCC Page 235 is concerned, it is submitted that the said judgment is not

applicable in the facts and circumstances of the present case. In the said case, the issue before the Hon'ble Supreme Court was as under:-

“5. We are, in this batch of appeals, concerned with the power of the Central Commission to make tariff and to revise the same at the instance of a generating company. Before, however, adverting to the said questions, we may notice certain undisputed facts.”

- 16.4 That the issue in hand in the present case is whether the Petitioner-Nigam can initiate recovery proceedings against the Respondent Colonizer through this Hon'ble Commission. Therefore, the proposition in hand is completely different and distinguishable from the issue before the Hon'ble Supreme Court in UPPCL Versus NTPC. In this regard, law is very clear to the extent that any observation by the Hon'ble Supreme Court beyond the context of the issue before it, would not be considered as ratio decendi (binding precedent).
- 16.5 That furthermore, in paragraph No.4 of UPPCL case (supra) it is Section 13 of the repealed Central Electricity Regulatory Commission 1998 Act is referred to, whereas, the Petitioner-Nigam has invoked Section 43, 46 and 50 of Electricity Act, 2003 read with Section 142, 146 of the Electricity Act, 2003.
- 16.6 That basic principle of statutory interpretation is that a headnote of a provision is not to be used to interpret the provision. Section 46 of 2003 Act merely empowers the Hon'ble Commission to authorize a licensee to charge dues incurred for providing any electricity supply. The issue in hand is once the licensee is authorized to charge dues what would be the mode of procedure of recovery for which not only the Electricity Act, 2003 is silent but also the regulations framed by this Hon'ble Commission are totally completely silent.
- 16.7 That the provisions of Electricity Act, 2003 confer certain powers on this Hon'ble Commission which are delineated extensively in Section 86 of the 2003 Act. A perusal of the enabling powers conferred upon this Hon'ble Commission would show that there is no intention of the legislature to confer powers on this Hon'ble Commission for the alleged recovery or any penal process against the Promoter-Colonizer.
- 16.8 That the Hon'ble Commission would have the jurisdiction to determine tariff, regulate electricity purchase, transmission, grant licence to take steps for promotion of co-generation and generation of electricity, adjudicate upon disputes between licences and generating companies, levy fee for the purposes of this Act etc. However, the Commission does not have the jurisdiction to adjudicate the issues involved in the present case, inasmuch as, no adjudicatory power has been conferred upon this Hon'ble Commission for recovery of the alleged dues and to exercise power under Section 142 against the Promoter/Colonizer and/or the Consumer.
- 16.9 That thus the pure legal issues raised by the Respondent-Promoter have not even been remotely touched in the written submissions much less met by the Petitioner-Nigam.

PRAYER:

It is therefore respectfully prayed that the present petition is liable to be dismissed for want of jurisdiction and otherwise also not

maintainable against the Respondent.

17. The case was finally heard on 16/12/2024. Ms. Sonia Madan Counsel for the petitioner submitted that the written arguments have already been submitted. The Counsel for the respondent developer Ms. Rupali Verma also stated that they have submitted their written arguments. The Commission reserved the order.

18. **Commission's Analysis and Order:**

The Commission observes that the dispute has arisen from alleged deficiencies in electrical infrastructure development by Respondent No. 1, causing delays in providing new electricity connections and additional load to residents of Parsvnath City. The Petitioner is seeking following reliefs through this petition:

- i) Urgent interim relief for the release of new connections to the new applicants/plot holders by augmentation of electrical infrastructure/ rectification of deficiencies in existing infrastructure to the extent feasible subject to submission of development charges on pro-rata basis voluntarily by the plot holders/new applicants in accordance with the submissions made above.
- ii) The Petitioner further seeks action against Respondent no. 1 for defaults in the creation of adequate electrical infrastructure with directions to Respondent no. 1 to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project.

Upon hearing parties, the Commission vide its interim order dated 31/01/2024 decided the first (i) prayer, the relevant excerpt of the order is *"The Commission as an ad-interim measure to help out the distressed residents, allows the petitioner to release the additional load/new connection to the prospective applicant(s) situated within the Project on voluntary payment of proportionate charges equivalent to the inadequacy of the developer as mentioned in the petition, subject to adjustment/refund (without interest) on curing deficiencies by the delinquent developers or payment of cost thereof. Further, the petitioner is directed to keep a record of the charges paid by the applicant(s) seeking release of new connection/additional load in the Project area and make the same available to the Commission as and when directed to do so. In case, the petitioner recovers the cost of the claimed inadequacies, the aforesaid charges voluntarily paid by the above applicants shall be adjusted/set off in their future energy bills."*

19. As far as the second prayer(ii) of the petitioner, seeking action against Respondent no. 1 for defaults in the creation of adequate electrical infrastructure with directions to Respondent no. 1 to deposit the requisite amounts in accordance with the conditions of the approved Electrical Plans and inadequacy in the project is concerned the following issues have been analysed by the Commission.

19.1 The respondent (R-1) in its first reply dated 19/01/2024 to the petition, had prayed that appropriate directions may kindly be passed in the

interest of the consumers, however, considering that there is no wilful default on the part of Respondent No.1 and the delay in setting up of electrical infrastructure is beyond its control, proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 are not warranted in the facts and circumstances of the present case. However, no any issue of the maintainability was raised in that reply. But subsequently in its written submissions dated 23.10.2024 the Respondent No.1 has raised issues of maintainability of the complaint and maintainability of prayer in terms of section 142 and 146 of the Electricity Act, 2003.

19.2 The Commission has considered the submissions made by the Petitioner in the Petition/Rejoinder, submission made in the reply filed by the Respondents and the pleadings made by both the parties and has also critically examined the entire material/information placed on the record by both the parties.

The Respondent no. 1 has objected to the maintainability of the petition and has raised following broad issues for consideration –

- a) The subject matter of present petition is outside the jurisdiction of the Commission;
- b) Untenability under Section 142 and 146 of the Electricity Act, 2003 as there is no wilful non-compliance of directions; and
- c) Inadequacy sought to be recovered is not tenable.

19.2 With regards to the objection raised by Respondent no. 1 qua the jurisdiction, the Commission has already adjudicated the similar objection in similar cases concerning non-development of adequate electrical infrastructure by the developers in various matters i.e. Order dated 08.08.2024 in Petition No. 51 of 2022; Order dated 07.05.2024 in Petition No. 44 of 2022 and Order dated 29.02.2024 in Petition No. 41 of 2022. In the instant Petition as well, the nature of objections is similar *qua* the jurisdiction of the Commission. However, the findings of the Commission as regards the jurisdiction are briefly summarized hereunder after consideration of all the contentions raised by both parties. –

- a) Section 86 of the Electricity Act, 2003 lists down powers of the Commission which entails adjudicatory, regulatory as well administrative functions to give effect to the intent and purpose enshrined under Electricity Act, 2003 as a State Electricity Regulatory Authority. Section 86(1)(i) and (k) of the Electricity Act, 2003 empowers Commission to specify or enforce standards with respect to quality, continuity and reliability of service by licensees and to discharge functions as it may be assigned to it under this Act. Construction of adequate electrical infrastructure is essential to ensure reliable, continuous and quality electric supply to the residents of the State.
- b) The Regulations notified by this Commission obligates the Developer to get the Electrification Plan approved for development of electrical infrastructure, that has to be built commensurate to the ultimate load of the project. The Electrification Plan is prepared for the projects licensed by the Department of Town and Country Planning, Haryana.

The obligation for cost of laying of electrical infrastructure is that of the Developer, which forms a component of the total project cost. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the Developer/Builder emanating from the regulations of the Commission which has a statutory force. Completion of such electrical infrastructure is essential for the licensee to provide reliable, continuous and quality electric supply to the residents of the State.

- c) Bilateral Agreement between Director General, Town and Country Planning, Haryana, (DTCP) and Developer also stipulates that it shall be the responsibility of the Developer for installing adequate electrical infrastructure in the areas for which they have been granted permission for development.
- d) The power of the licensee to ensure quality, continuity and reliability of service is also governed by various regulations notified by Commission. The completion of the electrical infrastructure necessary to provide electrical supply for the project is an obligation of the developer/builder emanating from various regulations which has a statutory force.
- e) Section 43 of the Electricity Act, 2003 casts a duty on the distribution licensee to supply electricity to the owner or occupier's premises. Proviso to S. 43 (1) of the Electricity Act, 2003 provides that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning within period "*as may be specified by the appropriate commission*".
- f) Section 46 of the Electricity Act, 2003 empowers Commission to frame regulations to authorize a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and plant are defined under section 2(20) and 2 (22) of the Act, that make part of the adequate electrical infrastructure that is required to achieve the ultimate load of a particular sanctioned area.
- g) Further, in context of recovery of charges by a licensee, Section 50 of the Electricity Act, 2003 requires that the State Commission shall specify an electricity supply code to provide for recovery of these charges.
- h) This Commission has notified Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 ("*Electricity Supply Code, 2014*") as well as Haryana Electricity Regulatory Commission Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security Regulations, 2016 ("*Duty to Supply Electricity Regulations, 2016*") with amendments issued from time to time. These Regulations empowers the Commission to issue directions and orders as considered appropriate

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

- i) Regulation 4.6 of Duty to Supply Electricity Regulations, 2016 provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer.
- j) Regulation 4.2.3 of Electricity Supply Code, 2014 provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by Commission under Section 46 of the Electricity Act, 2013.
- k) The relevant regulations notified by the Commission, which obligates Developer to create Electrical Infrastructure are as under –

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

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

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

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

(c) The aforesaid execution plan for installation of complete Electrical Infrastructure by the Developer may be executed in maximum 4 (four) phases spanning over a period of 5 (five) years or such executed in other extended period as may be deemed fit by the Distribution Licensee. Provided, in case of development of large area (50 Acre or above) the phases for execution may be six spanning over period of 10 years including extension granted by the appropriate authority. Provided that, the land which constitutes a phase declared by the Developer shall be contiguous and one single piece of land.

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

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

Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020.

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

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

Provided that in case of Developer/Users Association covered under Regulation 4.1 or 5.2, the distribution licensee shall ensure, before release of Single Point Supply connection, that the Developer has completed the installation of entire electrical infrastructure within its complex as per the approved electrification Plan.

Provided, if at the time of energization of the system it is noted that the concerned **Developer has not executed the complete work** as per the electrification plan approved by the licensee, **the Developer shall be required to furnish the Bank Guarantee for the**

balance incompletd work as per regulation 4.12 of HERC Duty to Supply Electricity on request, Power to recover expenditure incurred in providing supply and Power to require Security Regulations, 2016 as amended from time to time. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.

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

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

- l) The foregoing regulations clearly obligates the Respondent no. 1 developer to execute the work of electrical infrastructure in their project area and to ensure that, it was incumbent upon them to have got the revised Electrification Plan approved, submit Bank Guarantee and take steps for completion of work as per approved Plan. A conjoint reading of the foregoing provisions evinces that the cost of development of distribution electrical infrastructure and supply has to be regularized and the recovery of cost thereof has to be made from the beneficiaries. Such cost has to be recovered in a manner that no consumer is incentivized at the cost of others.
- m) If the infrastructure required as per the peak load requirement of an area is inadequate and UHBVN releases new connections and provides electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose. A conjoint reading of the provisions of the Electricity Act 2003 and regulations framed thereunder, vest the power with this Commission to regulate development of electrical infrastructure in the State to ensure a robust and reliable electrical supply to the consumers of the State.
- n) Hon’ble Supreme Court in **UPPCL v NTPC (2009)6 SCC 235** held “A regulatory Commission not only makes Regulations but in view of its extensive powers BUT ALSO in-charge of implementation thereof.” The Commission’s power/jurisdiction to issue necessary directions for recovery of costs, which is the obligation of the Developer, as sanctioned by the Regulations, is enshrined in the statutory framework.

- o) Due to lack of adequate electrical infrastructure, there has been a serious prejudice caused to the Petitioner as well as buyers of the premises in Projects. Commission had duly taken cognizance of this difficulty while passing interim orders seeking time gap arrangement for release of electric connections by augmentation of infrastructure at the cost of the residents to ease the hardship caused to the consumers.
- p) In the event the cost for development of adequate Electrical Infrastructure is not borne by the Developer, the same shall have to be passed through the Annual Revenue Requirement of the Petitioner Nigam thereby burdening the consumers at large without providing any direct benefit to them, which is against the Electricity Act, 2003. It is therefore, the function of this Commission to ensure and check the violation of such regulations and provisions of Act that disrupts quality, reliability as well as continuity of supply of electricity in the State. The Commission has thus, has the jurisdiction to adjudicate on the present issue under section 86 (1) (i) and (k) of Electricity Act, 2003.
- q) In terms of the settled principle of law relating to “removal of difficulty” clauses and their invocation as stated above, the Petitioner has thoroughly furnished as to how the lack of adequate infrastructure on account of the Respondent is consonant with the difficulty faced by the Petitioner in performing its duty to supply electricity to the consumers under the Electricity Act, 2003 and the Regulations referred above. The scheme of the Electricity Act, 2003 and the provisions of the regulations has to be read harmoniously to establish the need for removing difficulty caused by Respondent no.1 in giving effect to the Regulations.
- r) The Commission has time and again taken cognizance of the issue of builder inadequacy by rightly exercising its powers under the Act as well as the Regulations in force. In view of foregoing, the Commission holds that it has jurisdiction to take cognizance of the default of Respondent no. 1 in creation of adequate electrical infrastructure for the project, to issue directions to ensure it is created to meet the ultimate load of the society, which is necessary to ensure the effective supply of electricity to the allottee’s, who have borne the cost of the same. Hence, the issue of jurisdiction as agitated by the Respondent no. 1 has no merit.
- s) As regards objection of the Respondent no. 1 regarding tenability of petition under Section 142 and 146 of the Electricity Act, 2003 is concerned, Sections 142 and 146 encompass powers of the Commission to penalize any person who contravenes any provisions of the Electricity Act and regulations framed thereunder. The object and purport of the aforesaid provisions are to ensure compliance of the provisions of Act and the Commission’s Regulations. Respondent no. 1 has not refuted the fact of having defaulted in creation of electrical infrastructure, the extent of such default or as regards the amount of inadequacy computed by the Petitioner. The Respondent no. 1 has failed to make any averments or reply towards its non-liability to bear the cost of electrical infrastructure for the project. The default on the part of the

Respondent essentially stands admitted. The Respondent no. 1 has failed to explain as to how the non-creation of electrical infrastructure is not wilful. Due to this deliberate non-compliance on the part of the Respondent no. 1, the inadequacy persists for years causing undue harassment to the consumers/residents in their Projects. This non-compliance calls for an action within the ambit of Section 142 of the Electricity Act which empowers the Commission to penalize for contraventions of “any of its order and regulation.

- t) The Petitioner submitted that Electrification plans for the project were approved for specific load requirements, but Respondent No.1 failed to install adequate infrastructure. Notices were issued to Respondent No. 1 to address deficiencies, provide suitable land for substations, and furnish bank guarantees citing violations of regulatory obligations and delays that have hampered service delivery to residents. Petitioner initially calculated the inadequacy cost as ₹19.37 crores. On 04/09/2024 the petitioner submitted that as per revised load norms, there is no change in the residential load for Sonipat city. However, there is a slight change in load calculation for commercial areas. As a result, the Inadequacy amount has been slightly revised from Rs. 19.37 Cr. to Rs.19.91 Cr.

The respondent-developer has admitted partial completion of the infrastructure and further submitted that delays were due to factors beyond its control, including defaults by allottees and unforeseen administrative hurdles and claimed to have transferred land for substations and initiated processes to secure bank guarantees. The respondent-RWA acknowledged the developer’s failure to meet obligations and expressed willingness to pay development charges on a pro-rata basis, provided that funds are strictly utilized for infrastructure completion and future reimbursements.

Having perused the details of inadequacies as furnished by the Petitioner, it is noted that, inadequacy of Rs.19.91Cr. remains in the Project developed by the Respondent and the Respondent is liable to cure the same in a time bound manner.

- 19.3 In view of the above facts and discussions, the Commission observes that the developer’s obligation to create infrastructure adequate for the ultimate load persists and the revised inadequacy of amount ₹19.91 crore is to be cured by the Respondent No. 1. Hence, the petition is disposed off with following directions to the Parties:

- a. The inadequacies equivalent to ₹19.91 Crores as established by the Petitioner shall be cured by the Respondent Developer within One year;
- b. The monthly progress report of the work on curing of inadequacies will be submitted by the Respondent Developer to the petitioner; and
- c. Requisite Bank Guarantee as per regulations shall be furnished by the Respondent Developer to the Petitioner within 30 days.

- d. The Respondent Developer is ordered to pay ₹50,000/- Court Fee deposited by the petitioner along with ₹15,000/- towards litigation expenses to the petitioner within 30 days from the date of this order.
- e. In case the respondent Developer fails to comply with the above-mentioned timeline, the Commission will be constrained to initiate proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 against the defaulters and stringent action shall be taken for such wilful and repetitive non-compliance.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 03/01/2025.

Date: 03/01/2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman