



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector – 4, Panchkula-134109
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(Regd. Post)

Appeal No. : 27/2023
Registered on: 14.03.2023
Date of order: 01.06.2023

In the matter of: -

Appeal against the order dated 31.01.2023 passed by CGRF, DHBVN, Gurugram in complaint No.4385/2022.

Sh. Pardip Kumar Rahi, E-2-801, G-21, Vatika Sector-83, Gurugram

Appellant

Versus

DHBVNL

Respondents

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Sh. Pardip Kumar Rahi

Present on behalf of Respondents:

Sh. Pardeep Soni, SDO 'Op' Manesar
Shri Sanjay Bansal, Advocate

ORDER

A. Sh. Pardip Kumar Rahi, E-2-801, G-21, Vatika Sector-83, Gurugram has filed Appeal against the order dated 31.01.2023 passed by CGRF, DHBVN, Gurugram in complaint No.4385/2022. The appellant request for following relief as under: -

We must get time bound action plan from builder M/s Vatika Ltd. For developing 33 KVA power infrastructure and if not done then DHBVN must act against them.

Order must be passed to builder M/s Vatika Ltd. that till the time they don't develop proper power infrastructure (33 KVA), the cost of DG running must be borne by builder M/s Vatika Ltd. No additional cost burden on 900+ families of G21 society.

B. The appeal was registered on 14.03.2023 as an appeal No. 27/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 17.04.2023.

C. Hearing was held on 17.04.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the appellant submitted that no reply of the respondent was received. The respondent SDO sought time to file

reply. Accordingly, the respondent SDO was directed to submit the point wise reply before the next date of hearing with a copy to the appellant. The matter was adjourned to 09.05.2023.

D. Hearing was held on 09.05.2023, as scheduled. Both the parties were present during the hearing through video conferencing. The counsel for the respondents requested for a short adjournment to file the reply being engaged recently. The respondent SDO was directed to file the pointwise reply through concerned XEN 'op' within 10 days' time. Acceding to the request, the matter was adjourned to 01.06.2023.

E. The counsel for the respondent vide email dated 27.05.2023 has submitted reply which is as under: -

1. *That the maximum issues in the above-mentioned appeal, which is raised by the appellant, is concerned with the builder named M/s Vatika Limited. Moreover, still the builder has not established the required external infrastructure for 33 KVA level supply, in the society. Then how can the respondent department provide 33 KVA level supply in the society. Whereas the respondent department is supplying power to the residents of the society through independent feeder. The residents are being provided the power supply through independent feeder providing for the partial load. So, till the builder do not establish the required external infrastructure for 33 KVA level power supply, the issue of supplying of proper power to residents of the society cannot be resolved. That on the basis of only above-mentioned contention, this appeal is liable to be dismissed.*

Brief Facts of the Appeal: -

1. *That on dated 18-10-2016 the respondent department has sanctioned Partial/interim load of 8965 KW or 9962 KVA against the ultimate load of 45744 KW or 50827 KVA to M/s Vatika Limited, for Vatika India, which is located at Sector- 81,82, 82A, 83, 84 & 85 Gurugram. And accordingly, after usual formalities, the partial load on 11 KV level was released to the builder (M/s Vatika Limited).*
2. *That as per the Nigam's instructions, a notice was issued to M/s Vatika Limited (builder of the society of Vatika India Next, Sector- 81 to 85) for submission of Bank Guarantee against the ultimate load of 45744 KW or 50827 KVA for creation of internal, external electrical infrastructure in the society, by XEN 'OP' Divn., Manesar vide office letter memo no. 341 on dated 28-01-2022.*
3. *That still the required external infrastructure for 33 KV level supply has not been established by the builder. And moreover, the supply of the residents is being provided through independent feeder providing for the partial load, by the respondent department.*

Point wise Reply: -

1. *That the contents of point no. 1 are related to the builder i.e. M/s Vatika Limited. However, the respondent department is providing the power supply on 11 KV through independent feeder to meet with the partial load.*
2. *That the contents of point no. 2 are related to the builder.*

3. That the contents of point no. 3 are related to the builder also.
4. That the contents of point no. 4 are related to the builder. Moreover, the builder may use the unified billing software for billing the resident on per HERC regulations.

So, it is, respectfully prayed, the present appeal may kindly be dismissed as the present complaint/ appeal stating that the builder of society G-21, Vatika, sector-83, Gurugram does not have proper power infrastructure and almost there is failure of power supply from multiple hours due to which the builder provides electricity through Diesel Generator Set and are charging 6 times more cost from residents. In this regards it is appropriate to mention that this is a matter of private builder vs. Local residents. So DHBVNL has no right to interfere between the private parties and cannot force any private builder to refund the Diesel Generator charges.

It is further prayed that the department cannot direct the builder M/s Vatika Limited to charge the cost of DG running, only for 1 hour, in cycle of 24 hours and further we cannot direct the builder to bear the cost of DG running, if fault is not rectified within a specified time and we cannot enforce the builder to complete the work on time bound manner for providing 33 KVA power infrastructure.

So, it is, therefore, prayed that keeping in view the above contentions of the respondent department the present appeal of the appellants may kindly be dismissed. And pass any other order in favour of respondent in the interest of justice.

F. The counsel for the respondent vide email dated 01.06.2023 has submitted additional reply which is as under: -

It has been mentioned that as per the latest documents received from the respondent department, it is submitted as follows: -

1. That it is pertinent to mentioned here that the respondent department has demanded the Bank Gurantee of amounting to Rs. 48.86 Cr. Vide memo no. 2938 dated 30-01-2019 against the ultimate load of 45744 KW or 50827 KVA, but the builder has filed a Civil Writ Petition No. 130 CWP-5898-2019 in the Hon'ble Punjab & Haryana High Court at Chandigarh. Copy of order is attached. And Hon'ble High Court has directed that "No coercive steps shall be taken in pursuance to the impugned memo dated 30-01-2019".
2. That further, the builder has not offered the land of size 1250 sq. yards for 33 kv S/Strn., so as to compliance the mandate in S/C no. D-14/2018 & D-05/2023.

In view of the above, the builder has not created the infrastructure at 33 KV level and also not submit the report of readiness for conversion of 11 KV level to 33 KV level and the compliance also not made as per provision of sanctioned letter and Nigam's S/C issued time to time for the release of connection of projects. Submitted please.

G. Hearing was held on 01.06.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the respondent submitted that they had issued a letter vide memo dated 30.01.2019 to deposit bank guarantee against the ultimate load but M/s Vatika Limited filed a Civil

Writ Petition No. 130 CWP-5898-2019 in the Hon'ble Punjab & Haryana High Court at Chandigarh. Hon'ble Punjab and Haryana High Court vide order dated 05.03.2019 has ordered "in the meanwhile no coercive steps shall be taken in pursuance to the impugned dated 30.01.2019" and the matter is pending in the court.

The appellant requested to direct the respondent to act against the builder for not creating adequate infrastructure.

H. Clause 3.18 (iv) of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 as amended from time to time provides as under:

"3.18 No representation to the Ombudsman shall lie unless:

iv) The representation by the Complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority."

I. Since the matter is pending in the Hon'ble Punjab and Haryana High Court so keeping in view of Clause 3.18 (iv) of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 the appeal before Ombudsman does not lie and hence, the same is hereby dismissed.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 1st June, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: - 1st June, 2023

CC-

Memo. No. HERC/EO/Appeal No. 27/2023/ 965-71

Dated:02.06.2023

1. Sh. Pardip Kumar Rahi, E-2-801, G-21, Vatika Sector-83, Gurugram
2. The Managing Director, DHBVN, Vidyut Sadan, Vidyut Nagar, Hisar-125005.
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109.
4. The Chief Engineer "Op", PO Power House, Rohtak Road, Punjabi Bagh, Delhi – 110035.
5. The Superintending Engineer, Operation Circle-1, DHBVN, Gurugram.
6. The Executive Engineer 'Op' Manesar Division, DHBVN, Gurugram.
7. The SDO 'Op', Sub/Division, Manesar, DHBVN, Gurugram.