

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

Case No. HERC/PRO- 63 of 2019

Date of Hearing : 09.06.2021

Date of Order : 23.06.2021

In the Matter of

Petition under Regulation 5.5 of HERC Single Point Supply Regulation 2013 read with section 94 of the Electricity Act 2003 seeking direction for restraining the private respondents from charging beyond the applicable electricity tariff and further direction for refunding the excess recovered amount along with interest to the Petitioner(s) which has been illegally recovered by Respondent nos. 1 and 2.

Petitioner M/s. Omaxe New Heights Apartment Owners
Condominium Association, Sector – 78, Faridabad.

V/s

Respondent 1.M/s Facility Plus Management Private Limited;
2. M/s. S N Realtors Pvt. Ltd.,
3. Dakshin Haryana Bijli Vitran Nigam, Hisar

Present on behalf of the Petitioner:

Shri Denson Joseph, Advocate

Present on behalf of Respondent:

Ms. Sonia Madan, Advocate

QUORUM

Shri R.K.Pachnanda, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

ORDER

1. That the present petition has been filed by the Petitioner(s) under Regulation 5.5 of the HERC (Single Point Supply to Residential Colonies or Office cum Residential Complexes of Employers, Group Housing Societies and Commercial cum Residential Complexes of Developers) Regulations, 2013 (hereinafter referred to as Regulations, 2013' for brevity), for restraining the wrongful overcharging of electricity by Respondents nos. 1 and 2 and the inaction of Respondent nos. 3 inspite of the issue having been brought to their notice.
2. The Petitioner(s) is a registered Society and represent the interest of the residents living in Omaxe New Heights Condominium (i.e. New Heights and Spa Village) in Sector – 78, Faridabad (hereinafter referred to as the Project);
3. The Respondent number 2, SN Realtors, is the developer of the aforementioned Project and has appointed Respondent number 1 to manage the facilities/ services at the Project Site that it had promised to the Residents living there.
4. The following are the submissions of the learned counsel for the petitioner:
 - That the Respondent number 1 is charging exorbitant electricity rates from Petitioner in gross violation of the Provisions under the Electricity Act and the regulations/rules/guidelines framed thereunder by the Haryana Electricity Regulatory Commission (HERC).
 - That the HERC vide its Order in case no. HERC/PRO -21 of 2018, Avenue 71 Apartments Owners Welfare Association (AAOWA), CHD Avenues 71, Sector 71, Gurgaon v/s CHD Developer had held that fixed charges cannot be levied on consumer whereas the Respondents number 1 contemptuously and in gross violation of the said order has been charging the Petitioner fixed grid charges @₹42/KW;
 - That the HERC guidelines and the Act clearly mandate that the body managing the facilities/ services in a Group Housing Society cannot charge its residents at a rate that is more than the rate at which such body is charged under the Single Point Supply scheme by the DHBVN whereas the Respondents number 1 has been charging Petitioner grid rates @₹5.85/Unit;
 - That the HERC guidelines/Orders and the Act clearly mandate that the body managing the facilities/ services in a Group Housing Society has to bill the 'common area lighting' separately whereas the Respondents 1 and 2 have not been billing these charges separately and have instead been charging the same together with the 'common area maintenance' (CAM) charges.
 - The counsel for the petitioner has further submitted that the HT cable to this Project suffers faults almost daily which therefore causes the running of the DG Set (installed as back-up) for about 6-7 hours almost daily. The electricity thus supplied through the DG set is charged at ₹18 per unit for DG run during the repair period. Thus, the poor-quality HT cable causes not only a huge financial burden on the Petitioner but also causes stress on the Environment.
 - That the feeder to the aforementioned Project is not separate and the HT cable comes from the Ford sub - station near BPTP bridge to the Project running through almost 2.5 kms. Also, the said feeder is a shared feeder

which the Petitioner is forced to share with another project called SRS Royal Hill and this overloading in turn leads to frequent power failures.

- That numerous follow-ups with Respondents no. 3 with the latest one being letter dated 06.08.19 have not elicited any coercive / corrective action against Respondents nos. 1 and 2.
- That even a legal notice was sent to the respondents on the 2nd of September 2019, however, the respondents neither replied nor made any effort to correct the grievances brought forth by the Petitioner.

5. The reply filed by the Respondent No.3, i.e. DHBVN is taken on record. The learned counsel for the Respondent No. 3 has submitted as following:

- That the HERC Single Point Supply Regulations, 2013 under which the present petition has been filed by the petitioner now stands repealed vide the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Residential cum Commercial/ Commercial Complexes of Developers and Industrial Estates/ IT parks/SEZ) Regulations, 2020 (hereinafter referred to as 'Single Point Supply Regulation, 2020').
- That due to the coming in force of the Single Point Supply Regulations, 2020, the claim of the Petitioner has been rendered infructuous having been filed under the repealed Regulations, 2013.
- that the Hon'ble Commission has no jurisdiction over the subject matter of the present dispute in view of Regulation 6.6 of the Single Point Supply Regulation, 2020. Regulation 6.6 provides that the Group Housing Societies (GHS) will not charge its residents at higher rate than the tariff for Domestic Supply and in case of any dispute the remedy available with the Residents/ Association is to file a complaint before the Consumer Grievance Redressal Forum/Ombudsman.
- That, even otherwise, the grievance of the Petitioner is that the Respondent no. 1, who has been appointed to manage the facilities/services of the project site by Respondent No. 2, being the developer of the project- Omaxe New Heights Condominium (New Heights and Spa Village) in Sector 78, Faridabad, had charged electricity tariff rates higher than those being supplied by the distribution licensee for the domestic supply tariff.
- That the Hon'ble Commission in PRO-35 of 2017 titled as Amita Sharma & Ors. v M/s Suncity Project Pvt. Ltd. had categorically observed that the dispute as regards billing of residents of the group housing society is the dispute inter se residents and the developer and the Answering Respondent may not enter into disputes of the residents and the developer. The relevant observation of the Hon'ble Commission is reproduced hereunder for ready reference –
"The Developer/ RWA may evolve its own mechanism for transparent accounting of income and expenditure account audit for electricity supply in the colony. The Licensee may not enter into internal matters/ RWS/Developers."

Accordingly, the dispute is inter-se between the Petitioner and Respondent no. 1 & 2, therefore, the Answering Respondent has no role to play in the internal matter of the Petitioner and Respondent Nos. 1 & 2.

- It is relevant to mention here that the Answering Respondent is concerned only with the initial installation of the power supply system in the Group housing society at its main gate and from there the distribution of the power along with the internal infrastructure is the responsibility of the group housing society. The Supply to Employers Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers is now governed by Single Point Supply Regulation, 2020. Further, any deviation and violation of same by the builder/GHSs/RAW would attract consequences under the provisions of the Electricity Act and regulations framed thereunder.
- That insofar as the allegations with respect to the HT cable of the Answering Respondent is concerned, it is submitted that at present there are no faults in the HT cable. In case of any fault noticed by the Answering Respondent, such a fault is rectified from time to time. Insofar as the feeder is concerned, it is submitted that at present there is no VCB available for shifting the Petitioner's society connection to a separate VCB. However, the Answering Respondent can consider the same, in case of availability and feasibility of such separate VCB.
- Further, in reply to the allegations levelled by the Petitioner of overloading and frequent power failures, it is submitted that there is no 'frequent' overloading.

6. **Proceedings**

The matter was initially heard on 04/02/2020. In spite of notice issued to the Respondents, none appeared on behalf of the Respondents. The Commission directed that notice be issued to the Respondents again.

The Matter was again heard on 16/03/2020. None appeared on behalf of the Respondent No.1 and 2. Ms. Aerika Singh, Advocate, appearing for respondent No.3 has informed that she has been engaged only 4 days ago, therefore, she sought adjournment of the matter to file reply. Respondent No.3 was directed to file its reply within 10 days with an advance copy to the petitioner.

The case was again heard on 05/08/2020. In compliance of order dated 16.03.2020, reply has been filed by Respondent No. 3. Sh. Navdeep Singh has put in appearance for Respondent No.1 and 2. He submitted that he has been engaged for the first time and although a copy of the summons was received, copy of petition has not been received. He requested for 10 days' time to file the reply and sought directions to petitioner to make available copy of petition. Request of the counsel for respondent No.1 and 2 was accepted and he was also advised to furnish an advance copy of reply to petitioner and respondent No.3. Counsel for petitioner is directed to furnish a copy of the petition to counsel for respondent No.1 and 2.

Finally, the Case was heard by the Commission on 09.06.2021, as scheduled, through video conferencing in view of Covid-19 Pandemic.

7. **Commission's Analysis and Orders:**

At the outset, the Counsel for Respondent No.3 DHBVN has argued that the present petition filed by the Petitioner under Regulation 5.5 of the Single Point Supply Regulations, 2013, stands repealed vide the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group

Housing Societies and Residential or Residential cum Commercial/ Commercial Complexes of Developers and Industrial Estates/ IT parks/SEZ) Regulations, 2020.

In order to decide the controversy, we proceed to analyse HERC Single Point Supply Regulations, 2020, relevant part is reproduced below:

“13. Repeal and savings: Save as otherwise provided in these Regulations, the Haryana Electricity Regulatory Commission (Single Point Supply) to Employers Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers, Regulation, 2013 including its Amendments issued subsequently are hereby repealed”

“6 Terms & Conditions for Single Point Supply:

6.6 a) The Employer/GHS/Users Associations will not charge the Residents/Individual Consumer, Common Services and other category loads in the Colony/GHS/ Complex for electricity supplied, at a rate higher than the tariff for Domestic Supply (DS)/other relevant category, approved by the Commission from time to time.

b) In case any Employer /GHS/Users Association charge the individual consumers with in its complex for electricity supplied at rates higher than the Domestic supply tariff/ other relevant category tariff (as per usage of electricity) approved by the Commission, the aggrieved Residents/Members shall have the right to jointly file a complaint against such GHS/ Employer/ Users Associations before the CGRF/ Ombudsman as per these Regulations for Redressal of their grievances”.

The Commission has carefully examined the Review Petition and reply/submissions made in writing as well as orally during the course of hearing and observes that as per the Haryana Electricity Regulatory Commission (Single Point Supply to Employer’s Colonies, Group Housing Societies and Residential or Commercial Cum Residential Complexes of Developers), Regulation, 2020 notified on 22.04.2020, in case any employer/GHS/User association charge the individual consumers for electric supplied at the rate higher than the tariff approved by the Commission, the aggrieved Residents/Members jointly may file a complaint before CGRF/Ombudsman for redressal of their grievances.

Accordingly, the petition is disposed-off being infructuous. However, the Petitioner(s) is/are at liberty to take up the matter with CGRF DHBVN Gurugram for redressal of their grievances as per the provisions prescribed in the HERC Regulations in vogue.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 23/06/2021.

Date: 23.06.2021 **(Naresh Sardana)** **(Pravindra Singh)** **(R.K. Pachnanda)**
Place: Panchkula **Member** **Member** **Chairman**