

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

Case No. HERC/P. No. 62 of 2024

Date of Hearing : 28/05/2025

Date of Order : 03/07/2025

IN THE MATTER OF:

Execution petition u/s 142 of the Electricity Act 2019 Against respondents for not obeying the orders of the CGRF Gurugram in case number DH/CGRF/3878/2021.

Petitioner:

1. Mahipal Singh s/o Sh Mohan Singh, T4/503, Pyramid Urban Homes-II, Sector 86 Gurugram
2. Vijay Singh s/o Sh Jai Kishan Saroa, T-2/1004, Pyramid Urban Homes-II, Sector 86 Gurugram
3. Madhu Bassi w/o Sh Sudesh Kumar, BE-11, Hari Nagar (CT) New Delhi
4. Deepak Verma s/o Sh Chander Bhan Verma, House Number 247 Shiv Puri Colony New Colony Gurugram
5. Leena Banerjee w/o Sh Shubhendu Banerjee, T3/1203, Pyramid Urban Homes-II, Sector 86 Gurugram

VERSUS

Respondent(s):

1. Pyramid Infratech Private Limited Unit 501-509 (5th Floor) Unitech Trade Centre, Sector 43 Gurugram
2. B. D Facility Management LLP 1304, Tower-4, Ansal Vally View Estate, Faridabad Road, Gwal Pahari, Gurugram
3. The Sub Divisional Officer, DHBVNL, Manesar District Gurugram

Present

On behalf of the Petitioner

Sh. Ashwani Kumar Singla, Advocate

On behalf of the Respondent

1. Ms. Sonia Madan, Advocate for R-3
2. Ms. Aerika Singh, Advocate for R-1 & R-2

QUORUM

Shri Nand Lal Sharma, Chairman

Shri Mukesh Garg, Member

ORDER

1. Petition:

- 1.1 That the petitioners filed a petition under Regulation 5.6, 6.4 & 6.6 of the HERC Single Point Supply Regulations 2020, before the Hon'ble HERC Panchkula on the 8th October 2021.
- 1.2 That the Hon'ble HERC vide their orders dated 08 Nov 2021 conveyed vide memo number 2916, directed the petitioners to file petition before CGRF Gurugram.
- 1.3 That in compliance to the directions as mentioned in para 2 (supra) the petitioners approached CGRF Gurugram vide their petition dated 16 November 2021 under case number 3878/GGN/2021.
- 1.4 The petitioners inter alia prayed for the following relief:
 - a. That the respondent's number 1 & 2 be ordered that with immediate effect that they should charge the plaintiffs at the rate as applicable to a DS user, further rising and falling in with the rates stipulated by the HERC / Government of Haryana from time to time.
 - b. Refund extra amount charged with effect from 01 December 2020 along with interest @12% from the date of payment till the date of actual refund.
 - c. Immediately stop charging Electricity Fixed Charges
 - d. Refund the fixed electricity charges, charged with effect from 01 December 2020 along with interest @12% from the date of payment till the date of actual refund.
 - e. To direct the office of the DTCP to monitor
 - f. To allow 4% rebate on the monthly bill
 - g. To direct DHBVNL to give direct connection to the residents.
- 1.5 The CGRF Gurugram vide its orders dated 14th Oct 2022 decided the matter and passed an order.
- 1.6 The CGRF Gurugram while deciding the matter ordered following relief: -
 - a. The builder managing the affairs of the Society should deliver the electricity consumption bills to its residents exactly as per formats described in annexure A& B of the Single Point Regulations of 2020 from the next billing schedule
 - b. The builder managing the affairs of the Society should immediately implement tariff order of HERC, applying all the telescopic tariff order of the HERC, on the basis of individual consumption from the next billing cycle.
 - c. No electricity connection should be disconnected except on the non-payment of electricity bill. SDO must ensure that no electricity connection is disconnected on account of non-payment of any charges other than those against electricity consumption.
 - d. For the period during which billing has not been done as per the HERC tariff order, the same should be rebilled and corrected bills be reissued to individual residents according to their individual consumption. Because fixed charges are not applicable for a domestic consumer, it has to be refunded, if charged earlier, while

rebilling on telescopic tariff.

- 1.7 A copy of the orders was sent to the respondents for compliance vide email dated 08 November 2022.
- 1.8 With utter disregard to the orders of the CGRF neither respondent number 1 & 2 nor SDO Electricity Manesar (Gurugram) took any action to comply with the orders. Hence this petition

PRAYER

- 1.9 To order the respondents to comply with the orders of the CGRF in letter and spirit.
 - 1.10 To impose a penalty of Rs. 1 lac each or any higher sum to each of the three respondents for not complying with the orders of the CGRF.
 - 1.11 To impose penalty of Rs.6,000. 00 per day or any higher sum to each of the three respondents if they continue to disobey the orders of the HERC.
 - 1.12 Any other relief as this Hon'ble Commission may deem fit.
2. The case was heard on 11/12/2024, None appeared on behalf of the respondent -2. Sh. Rajeev Bhatia counsel for the respondent-1 submitted that they are not aware of any order passed by CGRF and have not received the said orders of CGRF pertaining to this case. As per directions of the Commission, Ms. Sonia Madan counsel for the respondent-DHBVN consented to supply the copy of the orders of CGRF to the respondent-1. The Commission adjourned the matter and directed the respondent-1 to submit the reply within one week with an advance copy to the petitioner and the petitioner to submit re-joinder, if any, within one week thereafter.
 3. The case was heard on 08/01/2025, None appeared on behalf of the respondent -2. Ms. Aerika Singh counsel for the respondent-1 submitted the reply to the petition and requested to take the same on record. Ms. Simran Arora counsel for the respondent-DHBVN submitted that the case is primarily related between petitioner and respondent 1 and 2 as such no submissions are being made by respondent DHBVN at this stage. The Commission directs the petitioner to submit its rejoinder within two weeks with an advance copy to the respondents
 4. **Reply of Respondent 1 dated 07/01/2025:**
 - 4.1 That the present reply is being filed through Vikas Sharma, on behalf of Respondent No. 1 (hereinafter "Answering Respondent") to the captioned petition preferred by the Petitioners under Section 142 of the Electricity Act, 2003. The authorization letter is enclosed. The

present reply is being filed in furtherance to the directions passed by the Hon'ble Commission vide interim order dated 12.12.2024.

PRELIMINARY SUBMISSIONS/ OBJECTIONS:

ORDER DATED 14.10.2022 WAS NEVER COMMUNICATED TO THE ANSWERING RESPONDENT THE ORDER DATED 14.10.2022 HAS BEEN

PASSED BEHIND THE BACK OF THE ANSWERING RESPONDENT WITHOUT SERVICE OF NOTICE AND WITHOUT PROVIDING ANY OPPORTUNITY OF HEARING:

- 4.2 That at the outset, it is brought to the notice of this Hon'ble Commission that, on receipt of notice issued by this Hon'ble Commission, the Answering Respondent had appeared through counsel before this Hon'ble Commission on 11.12.2024. It is humbly submitted that the passing of certain adversarial order by Ld. Consumer Grievance Redressal Forum(hereinafter "Ld. CGRF") came to the knowledge of the Answering Respondent only when the notice for the captioned petition was served upon the Answering Respondent by this Hon'ble Commission. It is humbly submitted that the said fact was duly brought to the notice of the Hon'ble Commission on hearing dated 11.12.2024.
- 4.3 That, prior to 11.12.2024, the Answering was not aware of any order passed or any proceedings initiated before the Ld. CGRF. In fact, the order passed by the Ld. CGRF was communicated to the Answering Respondent for the very first time only after the passing of the interim order dated 12.12.2024 that too by the counsel for Respondent No. 3-DHBVNL and not by the Petitioners.
- 4.4 That, thereafter, on the perusal of the order dated 14.10.2022 passed by the Ld. CGRF, it was revealed that the Answering Respondent was never even arrayed as a party to the proceedings before Ld. CGRF. The order has been passed behind the back of the Answering Respondent, without service of any notice. No opportunity of hearing has been provided to the Answering Respondent and the order has been passed in direct conflict to the principals of natural justice and as such is in violation of Regulation 4.4 Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulation, 2020 reproduced below for ready reference:

"4.4. Subject to these Regulations, the Forum and the Ombudsman shall be guided by the principles of natural justice and shall have powers to regulate their own procedure. "

Further, the order dated 14.10.2022 has also been passed in violation of Regulation 2.30 & 2.35 Haryana Electricity Regulatory Commission (Forum and Ombudsman) (1stAmendment) Regulations, 2022, reproduced below:

"2.30 On receipt of the comments from the concerned officer of the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall appropriate orders for disposal of the

grievance within a period not exceeding forty-five (45) days from the date of receipt of the complaint/grievance.

.. ..

2.35 The Forum may evolve procedure conforming to the principles of fair play and justice for efficient discharge of its functions. It shall also follow the guidelines, if any, given by the Commission regarding the procedure to be adopted by it for handling the complaints. "

- 4.5 That attention of this Hon'ble Commission is also brought towards the decision of the Hon'ble Apex Court in the case of M/S Daffodills Pharmaceuticals Ltd. & Anr. Vs. State of U.P & Anr. [Civil Appeal No. 9417 of 2019, Decided on 43.12.2019], wherein the Hon'ble Apex Court held as under:

"15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case."

As such, the order of the Ld. CGRF cannot be executed being passed in violation of basic principles of natural justice and without affording any opportunity of hearing to the Answering Respondent. The Conduct of Business Regulations confer upon the Hon'ble Commission wide powers to pass such orders necessary to meet the ends of justice, as such it is humbly submitted that the Hon'ble Commission may kindly set-aside the order dated 14.10.2022 and remand the matter back to Ld. CGRF for passing the order afresh after following due procedure.

PETITION UNDER SECTION 142 OF THE ELECTRICITY ACT 2003 NOT MAINTAINABLE IN ABSENCE OF WILL-FUL NON-COMPLIANCE':

- 4.6 That, without prejudice to the foregoing, it is submitted that even otherwise, the present petition is not maintainable having been filed without compliance of procedure under Regulation 3.26 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 which prescribes as under:

"3.26 The Licensee will comply with the award/Order within 15 days of the date of receipt. Non-compliance of the award/ Order within the stipulated period shall be treated a violation of these Regulations and liable for appropriate action by the Commission under the provisions of the Act. Such violation: if any, may be brought to the notice of the Ombudsman by the consumer. The Ombudsman will provide the consumer as well as the Licensee an opportunity of being heard and

send a report to the Commission within 30 days of the date of such hearing. On consideration of the report of the Ombudsman the Commission will take further action including that under Section 142 of the Act as it may deem fit"

It is nowhere mentioned in the Petition whether the Petitioners had approached the Ld. Ombudsman prior to the filing of the present petition in terms of the aforesaid Regulations.

- 4.7 That even otherwise, the requirements for contempt i.e. a wilful disobedience or failure to abide by any law on the part of the Answering Respondent, is not made out in the instant case. Section 142 falls under Part XIV of the Electricity Act, 2003 which relates to 'Offences and Penalties'. It is submitted that the intent of the sections providing for a penal action which the Petitioners are seeking to invoke must be understood in the context of intent with which it has been enacted. It is the case the Respondent that any imposition of penalty, under the said section would require proof of Mens-rea. In absence of the element of wilful disobedience on the part of Respondent, no relief is liable to be granted to the Petitioners. Reliance in this regard is placed on the decision in case of Ashok Paper Kamgar Union Vs. Dharam Godha & Ors., [(2003) 11 SCC 1, (Para 17)], wherein the Hon'ble Apex Court analysed the concept of wilful disobedience of the order of the Court and it was held that element of willingness is an indispensable requirement for holding a person guilty of contempt and held as under: "17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily. and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt, the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case."

In the present case, the Answering Respondent was not even aware of the passing of the order dated 14.12.2022, as such, the question of any willful disobedience does not arise and as such, Section 142 cannot be made applicable to the facts and circumstances of the present case.

ORDER DATED 14.10.2022 CANNOT BE EXECUTED AGAINST THE ANSWERING RESPONDENT:

- 4.8 That as have been admitted by the Petitioners in the list of 'dates and events' that the Answering Respondent had already handed over the possession of the flats to the Petitioners/Respondent No. 2. Once the possession of the flats has been handed over, no order with respect to

the purported incorrect bills can be passed against the Answering Respondent as admittedly the Answering Respondent has no role to play in the issuance of the purported bills. As such, the order dated 14.10.2022 cannot be executed as against the Answering Respondent.

- 4.9 That even otherwise, the order dated 14.10.2022 passed by Ld. CGRF is an ex-parte order and the same is liable to be quashed. It is submitted that the said order is liable to be set-aside as against the Answering Respondent as the Answering Respondent has not been heard on the subject dispute and consequently could place its defense before the Ld. CGRF. The order dated 14.10.2022 cannot be considered as an order passed on merits of the case and hence, cannot be executed as against the Answering Respondent.

PETITION LIABLE TO BE DISMISSED ON ACCOUNT OF DELAY AND LATCHES:

- 4.10 That the present petition is also not maintainable in view of the delay and latches. It is submitted that the cause of action to seek execution of the order accrued in the favor of the Petitioners on 14.10.2022, however, the present petition has been filed by the Petitioners only recently i.e. after a lapse of over 2 years. Thus, the present petition is not maintainable in light of the legal maxim "vigilantibus non-dormantibus jura subvenient" i.e the law helps those who are vigilant and not those who sleep over their rights. Therefore, the present petition is liable to be dismissed on the sole ground of delay and laches.

PARA-WISE REPLY:

- 1-6 That the contents of para no. 1 to 6 are denied for the want of knowledge.
7. That the contents of para no. 7 are wrong and denied as copy of order was never served upon the Answering Respondent.
8. That the contents of para no. 8 are wrong and denied. It is denied that any action was liable to be taken by the Answering Respondent in view of the detailed reasons mentioned hereinabove.

Prayer clause is denied.

PRAYER

In view of the peculiar facts and circumstances mentioned hereinabove, it is most respectfully prayed that the present petition may kindly be dismissed as against the Answering Respondent;

AND/OR

The matter may kindly be remanded back to the Ld. CGRF with a direction to decide the matter afresh only after providing an opportunity of hearing to the Answering Respondent by following due process of law;

AND/OR

The Hon'ble Commission may kindly pass any other order/direction as deemed fit, in the interest of justice and equity.

5. The case was heard on 20/02/2025, Ms. Sushma Chopra counsel for the petitioner submitted a rejoinder and requested to take the same on record. Ms. Aerika Singh counsel for the respondent-1 submitted that the order by CGRF has been passed on the back of respondent-1 as they were not made party in the said order. To the query of the Commission regarding responsibility of respondent-2 in this case, Ms. Sonia Madan apprised that the CGRF has issued directions to the builder managing the affairs of society. Upon hearing the parties, the Commission decides to issue fresh notice to respondent-2 to file its reply within two weeks. The Commission will proceed further ex-parte in case respondent-2 fails to submit any reply or appear in the court on the next date of hearing.

6. Rejoinder of petitioner submitted on 20/02/2025:

- 6.1 It is incorrect on the part of the respondent 1 to state that they came to know about orders of the Ld CGRF only when the notice of petition was received by them.
- An email dated the 8th November 2022 was sent inter-alia to Respondent number 1 along with copy of the orders passed by the Ld CGRF Gurugram.
 - Advance copy of the petition before this Hon'ble Commission was sent to Respondent number 1 through email dated 9th August 2023.
 - As there were objections by the registry that names of all petitioners have not been mentioned in the orders, the petitioners filed an application before Ombudsman and the Respondent number 1 was served with a copy of the appeal filed before Ombudsman on 05 Oct 2023.
 - After getting the orders corrected fresh appeal was filed before this Hon'ble Commission and an advance copy of the petition along with orders of the Ld CGRF was served upon the Respondent number 1 through email dated 17th June 2024.
 - A print out of the petition filed before this Hon'ble Commission was sent through India Post which was received back with remarks 'गार्ड ने अन्दर नहीं जाने दिया'.
 - That when the envelop mentioned above was received back undelivered an email was sent on 21 June 2024 to the Respondent number 1 with request to get the envelop collected.

That the respondent number 1 has not replied even a single email. It is apodictically established that the Respondent number 1 was fully aware of the proceedings but they chose to remain silent and agitate later on.

Further the petitioners had provided email ids of all the respondents along with that of Respondent number 1 to the Ld CGRF. An email dated 26th November 2021 was sent to CGRF Gurugram to that effect.

On 22nd December 2021 the Ld CGRF decided to summon defendants including Respondent number 1 and an email was sent to Ld CGRF on 22nd December 2021 again providing email ids of the respondents.

Para 3

The above submissions make it clear beyond any reasonable doubt that the Respondent number 1 was fully aware of the proceedings before CGRF and the orders passed by the Ld CGRF. If Respondent number 1 had any objection to the orders said to have been passed by the Ld CGRF at its back, they could have immediately approached the Ld CGRF when the copy of the orders was served upon them vide email dated the 8th November 2022). Their silence at the material time has not been explained in the reply.

PARA 4 and PARA 5

It is again respectfully submitted that Respondent number 1 chose to remain unresponsive and silent at the material time and now they cannot be permitted to agitate especially when there is no fault on the part of complainants/ petitioners.

PARA 6

The Ombudsman was approached for a limited purpose of getting the names of all complainants reflected in the orders of the Ld CGRF. It is pertinent to mention that the Respondent number 1 was kept in loop vide email 05 October 2023

PARA 7

It is absolutely incorrect and false on the part of Respondent number 1 to state that they were not aware of the orders passed by the Ld CGRF. Emails dated 08 Nov 2022 17th June 2024 establishes that the Respondent-1 was fully aware of the orders passed by the Ld CGRF but for the best reasons known to them they chose to remain silent at the material time.

The Respondent number 1 was also made aware by the SDO Manesar for implementation of the suo-motu orders of the HERC, vide memo number 218. The respondent number 1 has not implemented the orders of this Hon'ble Commission.

PARA 8

The Respondent number 1 is under obligation to maintain the society which includes common services for a period of 5 years under para 4(V) of Affordable Housing Policy 2013 of the Government of Haryana. The Respondent number 1 in a clandestine manner is collecting Common Area Maintenance Charges through pre-paid electricity meter. The Respondent number-1 cannot wash its hands off from the project and maintenance thereof till the project is handed over to the RWA.

PARA 9

It is again submitted on the basis of foregoing submissions that it was Respondent-1, who knowingly all the facts chose to remain silent.

PARA 10

The orders were corrected by the Ld CGRF, after appeal before the Ombudsman was allowed, on the 9th February 2023. Present petition was filed as a last resort only after Respondent number 1 & 2 failed to

implement the orders despite repeated requests of the Complainants/petitioners.

It is submitted that the Respondent number 1 is trying to escape its liability on one pretext or the other.

The respondent number 1 has been served an advance copy of this replication through email on the 18th February 2025.

7. The case was heard on 19/03/2025, The Commission was apprised that Ms. Aerika Singh has sought adjournment on behalf of respondent 1 and 2 through email dated 13/03/2025, due to health issues. She has also submitted vakalatnama for respondent no.2. Sh. Sayyam Garg, proxy counsel requested for some time to file the reply of respondent-2. Acceding to request of the respondents 1 and 2, the Commission adjourned the matter and respondent -2 to file its reply within 2 weeks.
8. The case was heard on 23/04/2025, Sh. Irshaan Singh, counsel for R-1 & R-2 requested for some more time to file the reply of respondent-2. To the query of the Commission as whether that R-1 and R-2 have same stand on the implementation of the CGRF orders, the counsel replied in affirmative. Acceding to request of the respondents 1 and 2, the Commission adjourned the matter and directs respondent -2 to file its reply with advance copy to petitioner, within 2 weeks subject to deposit of late filing fee of Rs. 5000/-. The petitioner may file its rejoinder, if any, with copy to respondents before next date of hearing.
9. **Reply of Respondent 2 received on 24/04/2025:**
 - 9.1 That the present reply is being filed through Mr. Yogindra Jatrana, Partner of Respondent No. 2 firm (hereinafter "Answering Respondent") to the captioned petition preferred by the Petitioners under Section 142 of the Electricity Act, 2003. The authorization letter is enclosed. The present reply is being filed in furtherance to the directions passed by the Hon'ble Commission vide interim order dated 19.03.2025.

PRELIMINARY OBJECTIONS WITH RESPECT TO THE MAINTAINABILITY OF THE PRESENT PETITION:
 - 9.2 That by way of the present petition the Petitioners are seeking execution of the order dated 14.10.2022 passed by the Ld. CGRF Gurugram. At the outset, it is submitted that a bare perusal of the order dated 14.10.2022 (appended at page no. 97 to 102 of the present petition) shows that certain directions have been passed against the "*builder managing the affairs of the society*". In this regard, it is humbly submitted that the Respondent No. 2 is not the "builder". The Answering Respondent was engaged by Respondent No. 1 for the

purposes of common area maintenance of the society. At present, the Answering Respondent has no power to either disconnect or issue fresh bills as have been directed vide the order dated 14.10.2022. Moreover, the Respondents have not been made severally and jointly liable.

Since no directions have been issued against the Answering Respondent, as per the concluding para of the order dated 14.10.2022, as such, the order of Ld. CGRF is inexecutable as against the Respondent No. 2. The present petition is liable to be dismissed outrightly, as against the Respondent No. 2.

- 9.3 That it is further submitted that a bare perusal of the order dated 14.10.2022 shows that the Answering Respondent was never a party to the proceedings before the Ld. Consumer Grievance Redressal Forum (hereinafter "Ld. CGRF"). It is submitted that the order dated 14.10.2022 has been passed behind the back of the Answering Respondent, without service of any notice upon the Answering Respondent. No opportunity of hearing has been provided and the order has been passed in direct conflict to the principles of natural justice and as such is in violation of Regulation 4.4 Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulation, 2020 reproduced below for ready reference:

"4.4. Subject to these Regulations, the Forum and the Ombudsman shall be guided by the principles of natural justice and shall have powers to regulate their own procedure."

Further, the order dated 14.10.2022 has also been passed in violation of Regulation 2.30 & 2.35 Haryana Electricity Regulatory Commission (Forum and Ombudsman) (1st Amendment) Regulations, 2022, reproduced below:

"2.30 On receipt of the comments from the concerned officer of the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall pass appropriate orders for disposal of the grievance, within a period not exceeding forty-five (45) days from the date of receipt of the complaint/grievance."

... ..

2.35 The Forum may evolve procedure conforming to the principles of fair play and justice for efficient discharge of its functions. It shall also follow the guidelines, if any, given by the Commission regarding the procedure to be adopted by it for handling the complaints."

- 9.4 That attention of this Hon'ble Commission is also brought towards the decision of the Hon'ble Apex Court in the case of M/s Daffodills Pharmaceuticals Ltd. & Anr. Vs. State of U.P. & Anr. [Civil Appeal No. 9417 of 2019, Decided on 13.12.2019], wherein the Hon'ble Apex Court held as under:

"15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved

and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

As such, the order of the Ld. CGRF cannot be executed being passed in violation of basic principles of natural justice and without affording any opportunity of hearing to the Answering Respondent. The Conduct of Business Regulations confer upon the Hon'ble Commission wide powers to pass such orders necessary to meet the ends of justice, as such it is humbly submitted that the Hon'ble Commission may kindly set-aside the order dated 14.10.2022 being inexecutable.

- 9.5 That, attention of the Hon'ble Commission is also brought towards the order dated 14.10.2022. A perusal of the order shows that the concerned SDO on various occasions was asked to send notice to the builder/ developers, however, ultimately it was held by the Ld. CGRF that – “...*The Forum observed that despite so many hearings and clear directions to the SDO to ask the builder to appear and reply to the issues raised in the compliant, no one from the builder has appeared even once and therefore the Forum decided to conclude the matter today on the basis of available record submitted by the complainant and the SDO.*” It is humbly submitted that no notice of the proceedings was ever served upon the Answering Respondent and admittedly, the case had been decided without hearing the Answering Respondent. As such, the present petition seeking execution of the order which is in direct conflict with the basic tenants of law, is liable to be dismissed.

- 9.6 That, interestingly, a copy of order dated 13.05.2024 (appended at page 121 of the present petition) shows that the Answering Respondent was added as a party to the proceedings subsequently. It is humbly submitted that a procedure completely alien to law has been adopted i.e.:

- i. The Answering Respondent has been added as a party to a case which already stands decided.
- ii. The parties have been added after a lapse of over one and half years from the date of decision.
- iii. No notice has been issued to the parties who had been added as party respondents.

It is respectfully submitted that the order dated 14.10.2022 read with 13.05.2024, if scrutinized in light of the most basic and fundamental principles of legal jurisprudence, would not withstand judicial scrutiny. Thus, the orders dated 14.10.2022 and 13.05.2024 are legally unsustainable and inexecutable in law.

- 9.7 That the present petition is also not maintainable having been filed without compliance of procedure under Regulation 3.26 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 which prescribes as under:

“3.26 The Licensee will comply with the award/Order within 15 days of the date of receipt. Non-compliance of the award/ Order within the stipulated period shall be treated a violation of these Regulations and liable for appropriate action by the Commission under the provisions of the Act. Such violation, if any, may be brought to the notice of the Ombudsman by the consumer. The Ombudsman will provide the consumer as well as the Licensee an opportunity of being heard and send a report to the Commission within 30 days of the date of such hearing. On consideration of the report of the Ombudsman, the Commission will take further action including that under Section 142 of the Act as it may deem fit”

It is nowhere mentioned in the Petition whether the Petitioners had approached the Ld. Ombudsman prior to the filing of the present petition in terms of the aforesaid Regulations.

- 9.8 That even otherwise, the requirements for contempt i.e. a willful disobedience or failure to abide by any law on the part of the Answering Respondent, is not made out in the instant case. Section 142 falls under Part XIV of the Electricity Act, 2003 which relates to ‘Offences and Penalties’. It is submitted that the intent of the sections providing for a penal action which the Petitioners are seeking to invoke must be understood in the context of intent with which it has been enacted. It is the case the Respondent that any imposition of penalty under the said section would require proof of *mens-rea*. In absence of the element of willful disobedience on the part of Respondent, no relief is liable to be granted to the Petitioners. Reliance in this regard is placed on the decision in case of Ashok Paper Kamgar Union Vs. Dharam Godha & Ors., [(2003) 11 SCC 1, (Para 17)], wherein the Hon’ble Apex Court analysed the concept of wilful disobedience of the order of the Court and it was held that element of willingness is an indispensable requirement for holding a person guilty of contempt and held as under:

“17. Section 2(b) of Contempt of Courts Act defines ‘civil contempt’ and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court. ‘Wilful’ means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance.

This has to be judged having regard to the facts and circumstances of each case.”

In the present case, the Answering Respondent was not even aware of the passing of the order dated 14.12.2022, as such, the question of any willful disobedience does not arise and as such, Section 142 cannot be made applicable to the facts and circumstances of the present case.

- 9.9 That even otherwise, the order dated 14.10.2022 cannot be considered as an order passed on merits of the case and hence, cannot be executed as against the Answering Respondent.
- 9.10 That the present petition is also not maintainable in view of the delay and laches. It is submitted that the cause of action to seek execution of the order accrued in the favor of the Petitioners on 14.10.2022, however, the present petition has been filed by the Petitioners only recently i.e. after a lapse of over 2 years. Thus, the present petition is not maintainable in light of the legal maxim “*vigilantibus non dormantis jura subvenient*” i.e the law helps those who are vigilant and not those who sleep over their rights. Therefore, the present petition is liable to be dismissed on the sole ground of delay and laches.

PARA-WISE REPLY:

- 1-6 That the contents of para no. 1 to 6 are denied for the want of knowledge.
7. That the contents of para no. 7 are wrong and denied as copy of order was never served upon the Answering Respondent.
8. That the contents of para no. 8 are wrong and denied. It is denied that any action was liable to be taken by the Answering Respondent in view of the detailed reasons mentioned hereinabove.

Prayer clause is denied.

PRAYER

In view of the peculiar facts and circumstances mentioned hereinabove, it is most respectfully prayed that the present petition may kindly be dismissed as against the Answering Respondent;

AND/OR

The Hon'ble Commission may kindly pass any other order/direction as deemed fit, in the interest of justice and equity.

10. Rejoinder of petitioner submitted on 23/05/2025:

This replication is being filed on behalf of the petitioners to the reply filed by the respondent number 2.

REPLICATION TO THE PRELIMINARY SUBMISSIONS/OBJECTIONS

- 10.1 It is incorrect on the part of the respondent 1 to state that do not fall under the category of builder. It has been admitted by the respondent in its reply that they have been appointed by the Builder i.e. Pyramid Infrastructure Pvt Ltd (R-1) and as such being their agent they also fall under the same category. And are liable for their acts along with the principal. All the billing is done by the replying respondent in its

own name, they charge GST in their own name they are maintaining bank accounts in their own name and as such fall within the category of the Builder.

10.2 It is also incorrect on the part of R-2 that they came to know about orders of the Ld. CGRF only when the notice of petition was received by them.

- a. An email dated the 8th November 2022 was sent inter-alia to Respondent number 2 along with copy of the orders passed by the Ld. CGRF Gurugram.
- b. Advance copy of the petition before this Hon'ble Commission was sent to Respondent number 2 through email dated 9th August 2023.
- c. As there was objections by the registry that names of all petitioners have not been mentioned in the orders, the petitioners filed an application before Ombudsman and the Respondent number 2 was served with a copy of the appeal filed before Ombudsman on 05 Oct 2023.
- d. After getting the orders corrected fresh appeal was filed before this Hon'ble Commission and an advance copy of the petition along with orders of the Ld. CGRF was served upon the Respondent number 2 through email dated 17th June 2024.

That the respondent number 2 has not replied even a single email. It is apodictically established that the Respondent number 2 was fully aware of the proceedings but they chose to remain silent and agitate later on. Further the petitioners had provided email ids of all the respondents along with that of Respondent number 2 to the Ld. CGRF. An email dated 26th November 2021 was sent to CGRF Gurugram to that effect.

On 22nd December 2021 the Ld. CGRF decided to summon defendants including Respondent number 2 and an email was sent to Ld. CGRF on 23rd December 2021 again providing email ids of the respondents.

The above submissions make it clear beyond any reasonable doubt that the Respondent number 2 was fully aware of the proceedings before CGRF and the orders passed by the Ld. CGRF. If Respondent number 2 had any objection to the orders said to have been passed by the Ld. CGRF at its back, they could have immediately approached the Ld. CGRF when the copy of the orders was served upon them vide email dated the 8th November 2022. Their silence at the material time has not been explained in the reply.

PARA 4 and PARA 5

It is again respectfully submitted that Respondent number 2 chose to remain unresponsive and silent at the material time and now they cannot be permitted to agitate especially when there is no fault on the part of complainants/ petitioners. The citation quoted by the respondents is applicable when they do not know from any means that there are some proceedings against them. In the present case the respondents very well knew that proceedings against them are in progress before CGRF and they maintained a calculated silence.

PARA 6

The R-2 was a responding party from the very beginning as can be seen from the application filed before CGRF. The contents of para 6 are incorrect and misleading.

PARA 7

It is incorrect that the petitioners never approached Ombudsman. However, for execution of CGRF orders it is not mandatory to first approach Ombudsman.

PARA 8

The respondent is a wilful disobedient of the Law. The respondent very well knows that prepaid meter can not be used to deduct any other charges except that of electricity consumption. It shows a number of illegal charges debited through prepaid meter.

The R-2 very well knows and is expected to know the CGRF suo moto orders dated the 18th April 2022.

It is absolutely incorrect and false on the part of Respondent number 2 to state that they were not aware of the orders passed by the Ld. CGRF. Emails dated 08 Nov 2022 17th June 2024 establishes that the Respondent-2 was fully aware of the orders passed by the Ld. CGRF but for the best reasons known to them they chose to remain silent at the material time.

The Respondent number 2 is otherwise supposed to know the Law of the Land and act accordingly. But With a view to fleece the innocent residents they are debiting the prepaid meter with unusual charges even after they knew that execution proceedings against them are pending in this Commission.

PARA 9

The CGRF orders are fully executable against R-2

PARA 10

The orders were corrected by the Ld. CGRF, after appeal before the Ombudsman was allowed, on the 9th February 2023. Present petition was filed as a last resort only after Respondent number 1 & 2 failed to implement the orders despite repeated requests of the Complainants/petitioners.

It is submitted that the Respondent number 2 is trying to escape its liability on one pretext or the other.

The respondent number 1 has been served an advance copy of this replication through email on the 05 May 2025.

11. Proceedings:

- 11.1 The case was heard on 28/05/2025, as scheduled, in the court room of the Commission.
- 11.2 At the outset, Ms. Aerika Singh counsel for R-1 and R-2 submitted that they were not party to the CGRF case. As such the order has been passed at the back of R-1 and R-2. The reply submitted by the R-1 and R-2 is only on the maintainability of the petition as the petitioners are

required to file same before Electricity Ombudsman. She further requested for some more time to file the reply on merits.

- 11.3 Sh. Ashwani Kr. Singla, counsel for petitioner submitted that Compliance of the order has not been made till date. The counsel exhibited various correspondences indicating that the order had been conveyed to R-1 and R-2 and the petitioners were constantly pursuing the respondents for compliance of the same. The counsel submitted that the charges like wrong parking etc. are also being deducted from the prepaid meters and if the balance in the meter gets exhausted even in night hours, the power supply of the consumer gets disconnected.
- 11.4 The counsel for the respondent DHBVN submitted that the case was very well in the notice of the R-1 and R-2 but they deliberately opted to remain silent in this case.
- 11.5 The Commission observed that the respondents are duty bound for compliance of the orders of CGRF and to submit complete reply on the merits of the case. The R-1 and R-2 are not issuing bills in compliance to the CGRF orders as well as not complying to the regulations.
- 11.6 The commission reserved the order and directed the parties to submit any additional submissions within 2 weeks.
- 12. Additional Submissions of Respondent 1:**
- 12.1 That the present additional submissions are being filed in furtherance of the order dated 02.02.2025 passed by this Hon'ble Commission, the relevant paras of which are reproduced below for ready reference:
"5. The Commission observed that the respondents are duty bound for compliance of the orders of CGRF and to submit complete reply on the merits of the case. The R-1 and R-2 are not issuing bills in compliance to the CGRF orders as well as not complying to the regulations."
- 12.2 That, at the outset, it is humbly submitted that no bills whatsoever are being issued by the Answering Respondent to the residents directly. As such, the question of non-compliance of any order of Ld. CGRF or non-compliance of any Regulations, by the Answering Respondent, does not arise. It is humbly submitted that any observation made by the Hon'ble Commission regarding issuance of wrongful bills to the individual residents may kindly be expunged, as no such bills are being issued by the Answering Respondent.
- 12.3 That it is further submitted that Respondent No. 2 is entrusted with individual metering, billing and collection of charges from individual user within the residential society. The operation and maintenance of all the infrastructure required for distribution of electricity within the society is also being looked after by the Respondent No.2. Thus, the

Answering Respondent has no role to play in billing of the petitioners/ individual residents/ consumers. In other words, the Answering Respondent has no role to play in the collection or further payment of the alleged invoices.

- 12.4 That as have been admitted by the Petitioners in the list of 'dates and events' that the Answering Respondent had already handed over the possession of the flats to the Petitioners/Respondent No. 2. Once the possession of the flats has been handed over, no order with respect to the purported incorrect bills can be passed against the Answering Respondent.
- 12.5 As such, the order dated 14.10.2022 is inexecutable as against the Answering Respondent. There has not been any non-compliance, let alone willful non-compliance, of the orders passed by any of the forums below. The detailed reply with respect to the in-executable nature of the order passed by the Ld. CGRF have been given in the reply dated 07.01.2025. It is submitted that the contents of the reply dated 07.01.2025 may kindly be read as part and parcel of these additional submissions, which are not being repeated here for the sake of brevity.
- 12.6 That further, the present submissions are being made without prejudice to the right of the Answering Respondent to challenge the Orders passed by the Ld. CGRF before the appropriate Court of Law.

PRAYER

- 12.7 In view of the peculiar facts and circumstances mentioned hereinabove and also in view of the detailed reply dated 07.01.2025, it is humbly prayed:
- 12.8 That the observations made by the Hon'ble Commission in the order dated 02.02.2025 regarding the non-compliance of the any of the orders of the Ld. Forums below, on the part of the Answering Respondent, may kindly be expunged;

AND

- 12.9 That the present petition may kindly be dismissed as against the Answering Respondent, as the order dated 14.10.2022 is inexecutable against the Answering Respondent;

AND/OR

- 12.10 The matter may kindly be remanded back to the Ld. CGRF with a direction to decide the matter afresh only after providing an opportunity of hearing to the Answering Respondent by following due process of law, in the interest of justice and equity.

13. Additional Submissions of Respondent 2:

- 13.1 That the present additional submissions/ reply are being filed through Yoginder Jatrana, on behalf of Respondent No. 2- B.D. Facility Management LLP (hereinafter "Answering Respondent") to the captioned petition preferred by the Petitioners under Section 142 of the Electricity Act, 2003. The authorization letter is already on record.

- 13.2 That the additional submissions are being filed in furtherance of the order dated 02.02.2025 passed by this Hon'ble Commission, the relevant paras of which are reproduced below for ready reference:

"5. The Commission observed that the respondents are duty bound for compliance of the orders of CGRF and to submit complete reply on the merits of the case. The R-1 and R-2 are not issuing bills in compliance to the CGRF orders as well as not complying to the regulations."

- 13.3 That, at the outset, it is humbly submitted that the orders have been passed by the Ld. CGRF behind the back of the Answering Respondent. Detailed reply with respect to the non-grant of a minimum opportunity of hearing by the Ld. Forum below has already been given by the Answering Respondent vide its reply dated 17.04.2025, the contents of which are reiterated, reaffirmed and may kindly be read as part and parcel of the instant Additional Submissions.

It is humbly submitted that the orders dated 14.10.2022 and 13.05.2024 are in direct conflict with and violative of Regulation 4.4 Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulation, 2020, read with Regulation 2.30 & 2.35 Haryana Electricity Regulatory Commission (Forum and Ombudsman) (1st Amendment) Regulations, 2022. Further, without approaching the Ld. Ombudsman in terms of Regulation 3.26, the Petitioners have straightaway approached this Hon'ble Commission. In view of submissions made by the Respondent No. 2 vide its earlier reply, it is humbly submitted that the issue of maintainability of the petition in its present form may kindly be decided at the preliminary stage.

- 13.4 That it is further submitted that the present submissions are being made without prejudice to the right of the Answering Respondent to challenge the Orders passed by the Ld. CGRF before the appropriate Court of Law.

ANSWERING RESPONDENT UNDERTAKES TO RAISE SEPARATE ELECTRICITY BILLS FROM THE MONTH OF JULY, 2025 ONWARDS:

- 13.5 That, without prejudice to the foregoing, it is submitted that Answering Respondent is entrusted with individual metering, billing and collection of charges from individual user within the residential society. The operation and maintenance of all the infrastructure required for distribution of electricity within the society is also being looked after by the Answering Respondent.

- 13.6 That, since the order dated 14.10.2022 passed by the Ld. CGRF has now come to the notice of the Answering Respondent, the Answering Respondent undertakes to raise the bills in terms of 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 "Regulations, 2020") from the next billing cycle.

NO AMOUNT IS LIABLE TO BE REFUNDED AS ALL THE AMOUNT CHARGED TILL DATE WAS DUE AND PAYABLE:

- 13.7 That insofar as the prayer for refund of any charges is concerned, it is submitted that all charges/ items which were billed including the charges related to D.G. back-up, CAM Charges etc. were due and payable by the Petitioners/ residents of the society. As such, the question of refund of charges does not arise. Even otherwise, there is no allegation regarding the charging of higher tariff.
- 13.8 That, it is further submitted, in case the Petitioners are aggrieved by any charges other than the electricity charges, the proper forum is the Consumer Court and not the Hon'ble Commission. The Ld. CGRF has also vide the order dated 14.10.2022 held- *"Any charges other than the electricity supplied by DHBVN, including any vending charges, are purely a matter between residents and the builder/ RWA and the Forum has no jurisdiction to adjudicate upon them."* As such, refund of any other charges is beyond the scope of present proceedings.
- 13.9 That further, insofar as the allegation with respect to the disconnection of electricity is concerned, attention in this regard is also brought towards the following para of the *"Statement of Objects and Reasons"* appended to the Regulations, 2020:

"Commission observed as under: -

... ..

v) Commission further observes that recovery of electricity bills, DG supply charges as well as electricity charge for common area supply may be recovered by the supplier through prepaid meter arrangement, provided these are separately indicated in the bill."

As such, the DG Charges, CAM Charges are recoverable through pre-paid meters. Further, in terms of Regulation 6.9 of the Regulations, 2020 the Answering Respondent is well-within its right to disconnect the supply of the defaulting residents.

SECTION 142 OF THE EA, 2003 HAS NO APPLICABILITY TO THE FACTS AND CIRCUMSTANCES OF THE PRESENT CASE:

- 13.10 That it is humbly submitted that the since the passing of the order by the Ld. CGRF was not in the knowledge of the Answering Respondent, as such Section 142 of the EA, 2003 has no applicability to the facts and circumstances of the present case. No penalty in terms of Section 142 is liable to be imposed on the Answering Respondent. It is further submitted that Section 142 falls under Part XIV of the Electricity Act, 2003 which relates to 'Offences and Penalties'. It is submitted that the intent of the sections providing for a penal action which the Petitioners are seeking to invoke must be understood in the context of intent with which it has been enacted. It is the case the Respondent that any imposition of penalty under the said section would require proof of *mens-rea*. In absence of the element of willful disobedience on the part of Respondent, no relief is liable to be granted to the Petitioners. Reliance in this regard is placed on the decision in case of Ashok Paper Kamgar Union Vs. Dharam Godha & Ors., [(2003) 11 SCC 1, (Para 17)], wherein the Hon'ble Apex Court analysed the concept of wilful disobedience of the order of the Court and it was held that element of willingness is an indispensable requirement for holding a person guilty of contempt and held as under:

“17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.”

In the present case, the Answering Respondent was not even aware of the passing of the order dated 14.12.2022, the same has been passed behind the back of the Answering Respondent without service of any notice by the Ld. CGRF. As such, the question of any willful disobedience does not arise. Section 142 of EA, 2003 cannot be made applicable to the facts and circumstances of the present case.

PRAYER

In view of the peculiar facts and circumstances mentioned hereinabove and also in view of the detailed reply dated 07.01.2025, it is humbly prayed:

1. That the observations made by the Hon'ble Commission in the order dated 02.02.2025 regarding the non-compliance of the any of the orders of the Ld. Forums below, on the part of the Answering Respondent, may kindly be expunged;
AND
2. That the present petition may kindly be dismissed as against the Answering Respondent in view of the undertaking to raise bill in terms of the Regulations, 2020 from the next billing cycle;
AND/OR
3. The matter may kindly be remanded back to the Ld. CGRF with a direction to decide the matter afresh only after providing an opportunity of hearing to the Answering Respondent by following due process of law, in the interest of justice and equity.

Commission's Order

14. The Commission observes, the core grievances revolved around being incorrectly charged, the absence of telescopic tariffs, the imposition of fixed electricity charges deemed inapplicable to domestic consumers, and the collection of extraneous charges through electricity bills.
15. The CGRF, Gurugram, after considering the matter, issued its order on October 14, 2022, granting specific reliefs critical to consumer protection

namely to deliver individual electricity consumption bills conforming precisely to the formats prescribed by the Commission in the regulations, immediate implementation of HERC's prevailing tariff order, specifically all telescopic tariff benefits, to be calculated based on individual consumption, arbitrary disconnections for non-payment of charges unrelated to actual electricity consumption and a comprehensive rebilling exercise.

16. The Petitioners submitted that despite communication of the CGRF order to all Respondents via email on November 8, 2022, a persistent and deliberate failure to comply ensued from Respondents No. 1 and 2, as well as the SDO Electricity Manesar (Gurugram).
17. On the other hand, Respondent No. 1 (Pyramid Infratech Pvt. Ltd.) submitted that the CGRF order dated October 14, 2022, was never duly communicated to them, rendering it an ex-parte order. R-1 argued that this amounted to a grave violation of natural justice, specifically contravening the well-established maxim of audi alteram partem (hear the other side). The Regulation 4.4 of the HERC (Forum and Ombudsman) Regulation, 2020, mandates adherence to natural justice principles, and further Regulations 2.30 and 2.35, stipulate reasonable opportunity of hearing. This argument was drawn from the Hon'ble Apex Court's decision in *M/s Daffodills Pharmaceuticals Ltd. & Anr. Vs. State of U.P. & Anr.* (Civil Appeal No. 9417 of 2019, Decided on 13.12.2019), which clearly established that no individual can be subjected to an adverse order without receiving a minimum opportunity of hearing and prior intimation.

Furthermore, R-1 contended that the petition under Section 142 of the Electricity Act, 2003, was fundamentally untenable due to the petitioners' failure to establish "willful disobedience." Relying on the Supreme Court's pronouncement in *Ashok Paper Kamgar Union Vs. Dharam Godha & Ors.* (2003) 11 SCC 1, Para 17), R-1 emphasized that "willful" implies a voluntary and intentional act or omission with a specific intent to disregard the law. Since R-1 claimed unawareness of the CGRF order, the element of willful non-compliance was argued to be

absent. Additionally, R-1 pointed to the Petitioners' alleged non-compliance with Regulation 3.26, which suggests referral to the Ombudsman for non-compliance matters prior to approaching the Commission under Section 142. R-1 also asserted that the CGRF order was inexecutable against them, as they had already transferred possession of the flats to the Petitioners/Respondent No. 2 and claimed no direct role in current electricity billing.

18. Respondent No. 2 (B.D. Facility Management LLP) submitted that the CGRF order was directed at the "builder" generally, and as they were merely a "facility manager" engaged by R-1. R-2 also highlighted being added as a party to an already decided case, ex-post facto, without proper legal procedure. However, a significant turning point in R-2's stance was its undertaking, made without prejudice to its previous contentions, to commence issuing electricity bills in strict accordance with the HERC Single Point Supply Regulations, 2020, from July 2025 onwards. R-2 refused to make any refunds for charges related to DG back-up and Common Area Maintenance (CAM), asserting these were legitimate dues recoverable via prepaid meters under Regulation 6.9 and the "Statement of Objects and Reasons" appended to the Regulations, 2020.
19. Respondent No. 3 (DHBVN) submitted that the core dispute lay between the Petitioners and Respondents 1 & 2. During the hearing on May 28, 2025, DHBVNL's counsel notably observed that the case was "very well in the notice of the R-1 and R-2 but they deliberately opted to remain silent." This implied that DHBVNL itself believed that the other Respondents were aware of the proceedings, leading to Petitioners' claims of willful inaction.
20. The Petitioners, in their rejoinders, refuted the Respondents' claims of unawareness, presenting a chronology of communications. They detailed multiple instances of emails sent to both R-1 and R-2, consistently attaching copies of the CGRF order. These included dispatches on 08/11/2022, 09/08/2023, 05/10/2023 and 17/06/2024. They further emphasized that email IDs of all respondents were furnished to the CGRF as early as 26/11/2021, and again on 22/12/2021, indicating that

CGRF itself was provided with means to serve them. The Petitioners asserted that R-1 and R-2 consciously "chose to remain silent and agitate later on," alleging their inaction as a "calculated silence" rather than genuine unawareness, which establishes the element of willful disobedience.

21. Addressing R-2's argument of not being the "builder," the Petitioners countered that R-2, as R-1's appointed agent handling all metering, billing, and collection, including charging GST and managing bank accounts in its own name, effectively operates as an extension of the builder. Thus, it falls within the definition of the entity "managing the affairs of the society" as referred to in the CGRF order and is equally liable for compliance. The Petitioners also clarified that while they had approached the Ombudsman for a specific, limited purpose (correction of names in the order), it is not a mandatory prerequisite to first approach the Ombudsman for the execution of a CGRF order under the prevailing regulations. Furthermore, the Petitioners highlighted the continued deductions of non-electricity charges, such as "wrong parking" fees, from residents' prepaid meters. They contended that these practices are not only unauthorized but also directly contradict HERC's orders dated April 18, 2022, which prohibit such arbitrary deductions leading to abrupt power disconnections, even during night hours.
22. The Commission has undertaken a detailed review of the entire record, including the initial petition, the comprehensive replies and subsequent additional submissions filed by the Respondents, and the detailed rejoinders submitted by the Petitioners along with the oral arguments presented by all learned counsels during the numerous hearings.
23. The most significant contention raised by both Respondent No. 1 and Respondent No. 2 pertains to the alleged fundamental breach of natural justice, specifically the deprivation of a proper notice and opportunity of hearing by the CGRF during its original proceedings. Regulation 4.4 of the HERC (Forum and Ombudsman) Regulation, 2020, clearly mandates that both the Forum and the Ombudsman shall be "guided by the principles of natural justice." This is further reinforced by Regulations

2.30 and 2.35, which explicitly require "affording reasonable opportunity of hearing to the parties" and stipulate that procedures must conform to "principles of fair play and justice." The Hon'ble Apex Court's ruling in *M/s Daffodills Pharmaceuticals Ltd. & Anr. Vs. State of U.P. & Anr.* (supra) serves as a potent reminder that an adverse order cannot be passed upon a party without due process.

While the Petitioners have presented evidence of email communications attempting to convey the CGRF order to the Respondents, the critical question remains whether the CGRF, *ab initio*, discharged its duty to formally serve notice and provide a fair opportunity to be heard *during the original proceedings* before rendering its order. The CGRF's own record, noting that "no one from the builder has appeared even once," regrettably suggests a procedural deficit in ensuring the participation of the affected parties. The subsequent, belated inclusion of R-2 as a party to an already concluded matter, without fresh adjudicatory proceedings, further compounds the procedural infirmity concerning natural justice. The Commission finds that they were not granted the requisite proper opportunity of hearing by the CGRF before the order dated 14/10/2022, was passed against the broad term "builder managing the affairs of the society." This procedural oversight, regardless of subsequent efforts, undeniably compromises the principles of natural justice and must be addressed to ensure the integrity of the judicial process.

24. Section 142 of the Electricity Act, 2003, is a penal provision, and its invocation depends on the establishment of "willful disobedience." The judicial interpretation of "willful," as articulated by the Supreme Court in *Ashok Paper Kamgar Union Vs. Dharam Godha & Ors.* (supra), necessitates an act or omission that is "voluntarily and intentionally" committed, demonstrating a "specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done... with bad purpose either to disobey or to disregard the law." Given the Commission's finding of a procedural flaw in the CGRF's original proceedings, where Respondents were not afforded a proper hearing, it becomes difficult to establish the element of "willful

disobedience" for the period prior to their undeniable knowledge of the order gained through the present Commission's proceedings. While the Petitioners have elaborated their persistent efforts to communicate the order, the initial absence of due process by the CGRF itself creates limit for imposing penal action for past on the grounds of "willful" intent. Regarding Regulation 3.26, while it recommends approaching the Ombudsman, the Commission finds its broader mandate to ensure regulatory compliance, though the natural justice issues in this case take precedence in determining the immediate path forward.

25. R-1's contention that it has handed over possession and has no role in billing, and R-2's argument that it is merely a "facility manager" not directly targeted by the "builder" directive, have been carefully considered. However, the Commission notes that R-2 is the entity directly engaged in individual metering, generating bills, collecting charges, and even charging GST in its own name. This operational control over the billing process, coupled with its agency relationship with R-1, effectively brings R-2 within the practical ambit of the "builder managing the affairs of the society" for the purpose of implementing the CGRF's billing directives. R-2's proactive undertaking in its additional submissions to comply with HERC Single Point Supply Regulations, 2020, from July 2025 onwards, further validates its capacity and responsibility to execute the billing-related aspects of the CGRF order. The Commission views the developer (R-1) and its designated billing agent (R-2) as a composite entity for ensuring compliance with electricity regulations within the complex.
26. The Commission observes that specific jurisdictional limitation stated by the CGRF in its order: *"Any charges other than the electricity supplied by DHBVN, including any vending charges, are purely a matter between residents and the builder/RWA and the Forum has no jurisdiction to adjudicate upon them."* defines the boundaries of what can be enforced directly through the CGRF's order. While the Petitioners have indeed raised legitimate concerns regarding the deduction of "wrong parking" and other non-electricity related charges from prepaid meters, and the

broader legality of collecting CAM and DG charges through such a mechanism, the CGRF had already declared these specific issues outside its purview. This Commission, in adjudicating an enforcement petition, is primarily focused on ensuring compliance with the existing CGRF order's parameters. Nevertheless, the underlying principle of transparent and compliant billing practices, as per the HERC (Single Point Supply) Regulations, 2020, remains paramount. The Regulations, particularly the "Statement of Objects and Reasons," explicitly permit the recovery of DG supply charges and common area supply charges through prepaid meter arrangements only provided these are separately indicated in the bill.

27. Having considered all arguments, evidence, and relevant legal provisions, the Commission finds it imperative to adopt a nuanced and equitable approach. This strategy aims to ensure that the principles of natural justice are upheld for the Respondents while simultaneously delivering substantive justice and regulatory compliance for the Petitioners. An outright dismissal would undermine the Petitioners' legitimate grievances and the CGRF's substantive findings, whereas immediate penal action would overlook the procedural flaw in the CGRF's original process.

28. Therefore, the Commission decides and directs:

28.1 The Commission observes that as per Single Point Supply Regulations, the bills to the residents of the society are required to be issued strictly as per tariff approved by the Commission. Since the Respondent No. 2 was engaged by the Respondent No. 1 for the purpose of common area maintenance of the Society, both the respondent No. 1 & 2 are jointly and severally liable for not issuing electricity bills as per approved tariff.

The CGRF in its order dated 14.10.2022 has mentioned in the proceeding held on dated 10.10.2022 that despite so many hearings and clear directions to the SDO to ask the builder to appear to reply to the issues raised in the complaint, no one from builder has appeared even once and therefore Forum decided to conclude the

matter. The petitioner has also referred in their submissions many emails to the Respondent No. 1 & 2 conveying the CGRF order. Even if it is presumed that the initial lack of a proper opportunity of hearing before the CGRF influenced the delayed compliance, from the date of their clear knowledge of the CGRF order through the detailed proceedings before this Commission, their obligation to comply fully and expeditiously with the CGRF's directives becomes in disputable and absolute.

28.2 The Respondent No. 1 shall ensure that the Respondent No. 2 (B.D. Facility Management LLP) shall strictly adhere to and honour the undertaking solemnly given to this Commission. Consequently, Respondent No. 2 shall commence the issuance of electricity consumption bills to all residents in exact and complete compliance with the formats described in HERC (Single Point Supply) Regulations, 2020, commencing decisively from the billing cycle of July 2025 onwards. This mandatory compliance shall include:

- a) The immediate and correct implementation of the HERC telescopic tariff order, ensuring that billing is accurately calculated on the basis of individual consumption to provide maximum benefit to the consumers.
- b) To clearly and distinctly itemize all charges recovered through prepaid meters, giving all components such as DG supply charges and common area maintenance (CAM) charges separately. Such itemization must strictly conform to the requirement of separate indication as stipulated in the "Statement of Objects and Reasons" appended to the Regulations, 2020, thereby ensuring utmost transparency for consumers.
- c) No electricity connection shall be disconnected if the payment of legitimate electricity bills based on consumption is made by the resident.

28.3 Respondents 1 & 2 are directed to carry out a rebilling exercise for the period commencing from December 1, 2020, onwards, for all affected residents. This rebilling shall be executed within a strict timeframe of

three months from the date of this order, in accordance with the HERC tariff order issued time to time and the applicable telescopic tariff structure. Any fixed charges previously levied on domestic consumers, being contrary to regulations, shall be promptly refunded. Such refunds shall be effected either by way of transparent adjustments in subsequent electricity bills or through direct payment to the affected residents. A detailed, statement of such rebilling, adjustments, and refunds shall be prepared and submitted to the Petitioners, within the stipulated three-month period.

29. The Petitioners are at liberty to approach the Commission for any future instances of non-compliance with the present order, or any continued unauthorized or non-transparent deductions through prepaid meters.
30. In light of the initial procedural lapse by the CGRF in granting a proper opportunity of hearing to Respondent No. 1 and Respondent No. 2 during the original proceedings, and considering Respondent No. 2's subsequent, undertaking to comply with the billing regulations going forward, the Commission, refrains from imposing penalties under Section 142 of the Electricity Act, 2003, at this juncture. However, any future failure to comply with the directions contained within this present order shall be viewed with utmost seriousness and shall invite prompt and stringent penal action under the relevant provisions of the Electricity Act, 2003.
31. The Petition stands disposed of in above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 03/07/2025.

Date: 03/07/2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman