

CONSUMER GRIEVANCE REDRESSAL FORUM – COMPANY LEVEL NOIDA
POWER COMPANY LIMITED

GREATER NOIDA

IN THE MATTER OF:

Old Complaint No. 72-C/2022

New Complaint No. CF/03/2024

Akhilesh Kumar Khan & Anr.

...Complainants

Versus

1. M/s Springlea Developer Pvt. Ltd.
2. M/s Hirise Facility Management Pvt. Ltd.
3. M/s Pristine Utilities Pvt. Ltd.
4. Noida Power Company Ltd.

...Opposite Parties

Quorum:

1. Shri Sanjiv Kumar Goel (Chairman)
2. Shri D.S. Pandey (Independent Member)
3. Shri Dev Ram (First Nominated Member)
4. Shri A.D Pandey (Second Nominated Member)
5. Shri Omveer Singh (Prosumer)

Appearance:

1. Shri Rupesh, Advocate for Complainant
2. Shri S. Swaroop, Advocate for Opposite Party No.2
3. Shri Avinash Chandra for Opposite Party No. 3
4. Shri Kapil Dev Sharma, Senior Manager (Legal) on behalf of Noida Power Company Limited

Order:

Date of Hearing: 24.05.2024

Date of Order: 25/07/2024

Order Pronounced By: Shri D.S Pandey- (Independent Member)



Goel

D.S. Pandey

Kapil Dev Sharma

Avinash Chandra

Omveer Singh

1. This Complaint has been filed through Mr. Akhilesh Kumar Khan and Ms. Vineeta Singh (hereinafter referred to as **“the Complainants”**) under the UPERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2007 (**“Regulations, 2007”**), residents of Stellar MI Citi Homes (hereinafter referred to as **“the Society”**), Plot No. GH07, Omicron III, Greater Noida, G.B. Nagar, U.P. – 201310. Subsequently, following the incorporation of new CGRFs, the matter was transferred to the CGRF – Urban Level under the new UPERC (Consumer Grievance Redressal Forum) Regulations, 2022 (**“Regulations, 2022”**). Thereafter, on the application dated 05.01.2024 of the Opposite Party No. 2 regarding the transfer of matter to CGRF- Company Level, the Complaint has been transferred to CGRF – Company Level vide order dated 05.01.2024 on the ground of pecuniary jurisdiction as the matter involved the disputed amount of more than Rs. 50,00,000/-.
2. The Complainants have filed this complaint against M/s Springlea Developers Pvt. Ltd. (hereinafter referred to as the **“Opposite Party No.1”**), M/s Hirise Facility Management Pvt. Ltd. (hereinafter referred as the **“Opposite Party No.2”**), M/s Pristine Utilities Pvt. Ltd. (hereinafter referred to as the **“Opposite Party No.3”**) along with Noida Power Company Limited (hereinafter referred as the **“Opposite Party No.4”**)
3. The Complainants in the present Complaint have stated that Opposite Party No. 1 has deputed Opposite Party No. 2 to maintain all the facilities till 2019 and thereafter deputed Opposite Party No. 3 for the same.
4. The Complainants in their Complaint contended that despite the show cause notice issued by the Opposite Party No. 4 vide their various letters, the Opposite Party 1



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& 2 have made illegal deductions through prepaid electricity meters in the name of Fixed Charges, CAM Charges, Club Charges, Water Charges, etc. from all the residents of the Society.

5. The Complainants have submitted that the electricity should be provided to the end consumers by the Opposite Party No. 1 and Opposite Party No. 2/Opposite Party No. 3 in accordance with the rules and regulations framed under the Electricity Act, 2003 read with the Uttar Pradesh Electricity Supply Code, 2005 (hereinafter referred to as the "2003 Act" and the "Supply Code, 2005" respectively) and Tariff Orders and Guidelines issued by the Hon'ble Uttar Pradesh Electricity Regulatory Commission (**Hon'ble Commission**) from time to time.

6. **The Complainant prayed for the following reliefs:**

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1. *Pay a sum of Rs. 67,76,550/- (Sixty Seven Lakhs Thirty Five Thousand Seven Hundred Eighty Two Only) and interest @12% to be paid in total (total fixed charges including interest should be refunded to the residents for the 37 months by M/s Hirise Facility Management Pvt. Ltd. and a sum of Rs. 11, 49, 278/- (Eleven Lakh Forty Nine Thousand two hundred and seventy eight) and interest @ 12% to be paid in total (total fixed charges including interest should be refunded to the residents for 13 months to be paid M/s Pristine Utilities Ltd.)*
2. *Pay sum of Rs. 10,00,000 for the physical strain, mental agony and financial damages suffered by the Complainants*
3. *Pay a sum of Rs. 10, 000 towards the cost of the Petition.*



7. The Opposite Party No. 1 filed its Reply on 13.12.2021. The Opposite Party No. 1 has contended that few residents are claiming to espouse the cause of all the

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residents of the Society without any authorisation on behalf of the residents. The Opposite Party No.1 has further contended that the Stellar MI Citi Homes Apartment Association (hereinafter referred to as “the AOA”) which has been granted registration on 09.06.2020 under the Uttar Pradesh Apartment (Promotion of Construction, Ownership, and. Maintenance) Act, 2010 (hereinafter referred to as “U.P. Apartment Act, 2010”) is the only proper, authorised and valid representative of the residents of the Society.

8. The Opposite Party No. 1 highlighted the case of **Umesh Chandra Vs. Mahila Vidyalay Society Aminabad**, Lucknow before the Hon'ble High Court of Judicature at Allahabad, Lucknow, Bench wherein it was held that individual member or office bearers unless authorised by rules or regulations or by the governing body has no right to represent the society and thus, the complaint is not maintainable and liable to be rejected on this ground itself.
9. The Opposite Party No. 1 has submitted that in light of Section 42(5) of the 2003 Act and Regulation 7.5 of the Regulations, 2007, the Consumer Grievance Redressal Forum (hereinafter referred to as “the Forum”) has the power to issue direction/order only to the Distribution Licensee and not any private individuals. Thus, the instant Complaint, seeking relief against private individuals and not the Distribution Licensee, is not maintainable and is liable to be dismissed.
10. The Opposite Party No.1 further submitted that the Opposite Party No. 2 has been the agency in-charge of the maintenance and management of the Society till February, 2019 and thereafter, the Opposite Party No.3, and they both have



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been responsible and liable for raising electricity bills to the residents and the Opposite Party No.1 had no role or responsibility regarding the same.

11. The Opposite Party No. 1 has asserted that the entire amount is deposited by the Residents to the Opposite Party No. 2 & 3 and no amount is collected or retained by the Opposite Party No. 1. Further they stated that no relief has been claimed by the Complainant from the Opposite Party No. 1.
12. The Opposite Party No. 2 filed its application for deletion of its name from the matter and to dismiss the complaint as not maintainable against Opposite Party No. 2, as the Opposite Party No. 2 was not carrying maintenance function in the society on the date of filing of this complaint in the year 2021.
13. The Opposite Party No.2 submitted that it is only a maintenance agency appointed for maintenance functions and provide other services/common facilities to the flat owners. All the service lines, metering system, software, dual electricity meters and all equipment's relating to various common services/facilities have been made available by the Opposite Party No. 1. Further, all the bills raised by Opposite Party No. 4 are in the name of Opposite Party No. 1. Moreover, Opposite Party no. 2 has submitted that they are only maintenance agency, neither a consumer of NPCL nor a deemed franchisee against whom the complaint can be maintainable.
14. The Opposite Party No. 4 submitted its Reply on 04.01.2022. The Opposite Party No. 4 has stated that the Society has a registered AOA which has not been made party in the Complaint, however, the AOA is the proper authority to file a complaint on behalf of the residents of the Society.



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15. The Opposite Party No. 4 submitted that M/s Springlea Developers Pvt. Ltd. (Opposite Party No. 1) is the registered consumer having a single point connection in the name of "Springlea Developers Pvt. Ltd." having Consumer No. 2000114661 with a contracted load of 900kW catering supply at GH-007, Omicron – III, Gautam Budhh Nagar (hereinafter referred as "the Premises") under LMV – 1 category (Domestic). The Opposite Party No. 4 pointed out that it never appointed Opposite Party No. 1 as its franchisee as per section 2(27) of the 2003 Act. However, as per the Tariff Orders issued from time to time by the Hon'ble Commission, Opposite Party no. 1 i.e. the body seeking bulk load at single point is declared as the **deemed franchisee** of the distribution licensee.
16. The Opposite Party No. 4 submitted that the Hon'ble Commission issued various guidelines for "Electrical Supply and Billing to End Consumers" vide its Tariff Orders which are intimated by the Opposite Party No. 4 to its Single Point Bulk Load Consumers from time to time. The Opposite Party No. 4 also sent several letters dated 08.12.2017 and 13.09.2019 regarding Guidelines for Electricity Supply and Billing to End Consumers to Opposite Party no. 1 along with the relevant part under consumer category LMV-1.
17. The Opposite Party No. 4 contended that the above-said letters clearly mentioned that apart from electricity charges, no other charges including but not limited to CAM Charges, Water Charges, Club Charges etc. shall be deducted from the pre-paid meters primarily installed for measuring the supply of electricity. The Opposite Party No. 4 submitted that distribution licensees are not conferred with any power under any statute so as to ensure the compliance



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of the guidelines of the Hon'ble Commission issued for Single Point Bulk Supply users except for the disconnection of electricity supply under section 56 of the 2003 Act but unfortunately in actual scenario such steps will ultimately affect the end consumers. Moreover, section 56 of the 2003 Act applies in case of default in payment of the electricity bills which actually doesn't constitute the case herein.

18. The Opposite Party No. 4 submitted that for such aforesaid reasons and considering such frequent complaints of the end consumers across the state of U.P., the Hon'ble Commission vide 13th Amendment has amended the clause 4.9 of the Supply Code, 2005 which mandates that all existing Single Point connections shall be converted to Multi-Point Connections. The Opposite Party No.4 had sent notice dated 17.07.2020 to Opposite Party No. 1 regarding conversion from single point to multi-point and subsequently published advertisements in the newspapers on 01.11.2020 and 14.03.2021.
19. The Opposite Party No. 4 further submitted that in response to the notice dated 17.07.2020, the registered AOA sent a letter dated 20.06.2021. In this letter, the AOA informed that they had sought consent from the residents via email. Out of 660 residents, only 68 responded to the email. Among those who responded, 40 residents preferred to retain the single-point connection, while 28 residents favoured converting the single-point connection to a multipoint connection. The AOA also indicated that they would keep the consent option open and notify Opposite Party No. 4 if there is any change in the majority decision. However, there has been no further response to Opposite Party No. 4. Opposite Party No. 4 asserted that they have complied with all the



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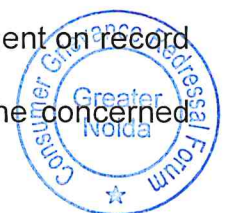
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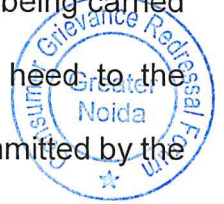
requirements stipulated in the Electricity Act 2003, the Supply Code, 2005, and various tariff orders issued from time to time. Therefore, they argue that there is no deficiency or defect in their services.





20. The Opposite Party No. 3 filed its Reply on 07.03.2022. The Opposite Party No. 3 submitted that the Complaint is not maintainable since the Complainants are seeking relief against the maintenance agency and not against the Opposite Party No. 1 which is the deemed franchisee and Opposite Party no. 4 which is the Distribution Licensee/NPCL which implies that the Complainants have no grievance against either the Distribution Licensee or the Builder/Deemed Franchisee, therefore; the Complaint is not maintainable under the 2003 Act for claiming reliefs against the Opposite Party No. 3. The Opposite Party No. 3 contended that it has been providing maintenance services from December, 2019 till 4th January, 2021 while the Complaint has been filed on 18.10.2021 when it was not providing services during such time period. Further, the Complainants have claimed Rs. 11, 49,278/- along with 12% interest against it whereas in fact the Opposite Party No. 3 had discontinued carrying on maintenance functions w.e.f. 04.01.2021 in the society which was before the date of filing of the complaint, therefore, the aforesaid claim for said amount against the Opposite Party No. 3 is not maintainable.
21. The Opposite Party No. 3 has further submitted that the Complaint is not maintainable as the Complainants have not produced any document on record which proves that they are authorised by all the residents of the concerned society to claim reliefs as prayed by the Complainants.



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22. The Opposite Party No. 3 submitted that the Opposite Party No. 1 had signed an Agreement dated 07.12.2019 with Opposite Party No. 3 to charge 15% on net expenditure incurred in maintaining the Society after deducting the electricity charges of the Opposite Party No. 4, as its service charges for maintaining the Society which it could not recover and incurred a loss of Rs. 14,40,996/-. The Opposite Party No. 3 had filed Profit & Loss Account for the period from December 2019 till 04.01.2021 and after discontinuing maintenance functions of the society had handed over all the accounts, documents along with letter dated 03.03.2021 to the President of Stellar MI City Apartment Owner Association.
23. The Opposite Party No. 3 contended that it was permitted by Opposite Party No. 1 to perform maintenance functions on contract of agency on behalf of Opposite Party No. 1 and thus, is not liable for the acts done by it on behalf of the Opposite Party No. 1.
24. The Complainants filed the Rejoinder to the reply of Opposite Party No. 2 and Opposite Party No. 4. The Complainants submitted that the residents of the Society have signed the Letter of Authorisation authorizing the Complainants to represent them and thus, the matter can be pursued by the Complainants on their behalf.
25. The Complainants have submitted that the Opposite Party No. 4 was duty bound to check and inquire into the fraudulent activities that were being carried out by the Opposite Party No.3, however it did not pay any heed to the Complaints and ignored the misappropriation and fraud being committed by the Opposite Parties.



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26. The Complainants further submitted that in compliance of the implementation of the 13th Amendment of the Supply Code, 2005, in case of non-submission of approval of retention, it shall be deemed that the conversion is to be made, however, the Opposite Party No. 4 failed to comply with the same.
27. The Complainants submitted that the Opposite Party No.2 was not a part of the project at the time of filing of the Complaint but it was a co-perpetrator at the time when the fraudulent activities were taking place.

Before passing any order in this matter, this Forum finds it necessary to discuss and provide detailed findings on certain issues to reach a well-informed conclusion. These issues are addressed as follows:

- a) The Complainants claim to have been authorised by all the residents of the society, however, the record shows a list of only 12 residents of the Society being party to the complaint. There is no authorization letter endorsed by the rest of the residents of the society or by the registered AOA that has been brought on record by the Complainants. Therefore, this Forum is of the opinion that the complainants cannot initiate a complaint on behalf of the unknown residents of the society till the time all the aggrieved residents are made either individually a party to the complaint or in a representative capacity and submissions are made on behalf of each and every resident with regards to the excess payment made along with cogent evidence.
- b) The Opposite Party No. 2 managed the maintenance functions of the Society from 07.11.2016, the date of the Maintenance Agreement, until February 2019. Subsequently, Opposite Party No. 3 took over the maintenance functions from 07.12.2019 to 07.12.2020, as per the agreement between



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Opposite Party No. 1 and Opposite Party No. 3 (as per the submissions of Opposite Party No. 3, it executed maintenance functions till 04.01.2021). Therefore, upon the handover of the society's maintenance to the AOA, the AOA, along with Opposite Party No. 1, 2, and 3, must have exchanged all relevant accounts and records. The complainants approached this Forum belatedly and have not provided sufficient evidence to accurately show the amount charged by the agency/deemed franchisee. It is important to note that this Forum, being a quasi-judicial authority, is limited to adjudicating complaints and does not have the authority to conduct investigations or collect evidence against any parties. It is, therefore, the responsibility of the complainants to present concrete evidence before the Forum to prove and establish any claims of excess charges being extracted by the Respondents. Without such evidence, this Forum cannot proceed further on such complaints, which lack evidences.

- c) The Complainants have contended that excess amount has been charged from them since 2016 until 2020. The Complainants in the Complaint sought relief only against Opposite Party No. 2 and 3 and not against Opposite Party No.1 and 4. Although, the Complainant in its rejoinder to the reply of Opposite Party No. 2 and Opposite Party No. 4 has contended that the Opposite Party No. 4 was duty bound to check and inquire into the fraudulent activities that were being carried out by the Opposite Party No.3, however, it did not pay any heed to the Complaints and ignored the misappropriation and fraud being committed by the Opposite Parties. In this regard, this Forum perused the Complaint along with its Annexures, Rejoinder and other submissions



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made by the Complainant, however it could not find any supporting document to verify this contention.

- d) In fact, the Complainants themselves have acknowledged and filed several letters and notices issued to the Opposite Party No. 1 by the Opposite Party No. 4 in compliance of various Tariff Orders (issued from time to time), the U.P. Supply Code, 2005 r/w Electricity Act, 2003. Upon perusal of the submissions made by the Opposite Party No. 4 in its reply, this Forum has found that the Opposite Party No.4 vide its letter dated 17.07.2020 sent a letter to the Opposite Party No. 1 and the AOA regarding conversion to Multi-point connection and sought their majority resolution thereof. Thereafter, the then Secretary of AOA replied to the above-mentioned letter on 20.06.2021 stating that they only received consent from approximately 10% of the residents. Thus, this Forum is of the view that the contention of the Complainant in this regard is incorrect.
- e) The Opposite Party No. 2 and Opposite Party No. 3 are the maintenance agencies appointed by the Opposite Party No.1 to ensure all the common services/facilities to the residents. They have provided their services as per the agreements/terms and conditions signed by the Opposite Party No.1, 2 and 3. The Opposite Party No. 4 is distribution licensee from which the Opposite Party No. 1 have taken single point electricity connection and is the deemed franchisee as per the tariff orders issued by the Hon'ble Commission from time to time. Thus, the Opposite Party No. 1 cannot escape from duties as provided in Tariff Orders issued from time to time.



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Upon going through the Electricity Act, 2003, the U.P. Supply Code, 2005, CGRF Regulations 2007, CGRF Regulations, 2022 and the Tariff Orders issued by the Hon'ble Commission from time to time, this Forum is of the view that the distribution licensee has not been provided with ample/sufficient power to take any coercive measures against such a single point bulk load consumers except to disconnect the electricity supply on the pretext of default in payment of electricity dues. In fact, in case the Distribution Licensee resorts to disconnecting power supply to enforce the guidelines, such measures will eventually affect the end consumers who will be the ultimate sufferers. In view of arising of such complaints by the residents of the Societies, the Hon'ble Commission brought 13th Amendment to the U.P. Supply Code, 2005 in order to convert all the Single-point connections to Multi-point connections. It appears that the same could not be done due to lack of willingness of the society w.r.t. conversion of their single point connection into multipoint connection.

28. Upon reviewing the pleadings exchanged between the parties and the relevant documents submitted by the respective parties, arguments as well as the above discussions, the order is passed in the following manner:

The complaint has been filed primarily by only 2 residents of the concerned society, Mr. Akhilesh Kumar Khan and Mrs. Vineeta Singh. However, in one of the annexures attached to the complaint it is being shown that 10 more residents (without any proof) have endorsed their authorization to this instant complaint thereby adding to the number of complainants as 12. The Complainants argued that the instant complaint being filed on behalf of all the residents of the concerned



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society or from the registered AoA. This Forum finds that through this complaint the relief/claim has been raised on behalf of the whole society without any authorization letter from the rest of the members/residents of the concerned society. In order to file a complaint on behalf of all the residents wherein claiming on behalf of all of them, the instant complaint had to be filed in a representative capacity and not in an individual capacity. It is the registered AOA of the society who has the locus to file such a representative suit/petition on behalf of the entire society.

Moreover, it is also found that the complainants have tried to establish before this Forum by claiming such an exorbitant amount, based upon their own conjectures and surmises, on behalf of the whole society without obtaining the authorization from the rest of the residents. The instant complaint consists of merely bald averments without an iota of evidence to support such claims. The complainants have simply submitted tabular charts showing the alleged amount recovered from the residents of the concerned society by Opposite Parties 1, 2 & 3. However, the calculations shown there in the complaint are purely based on the assumptions and is devoid of any substantive evidence to support the exorbitant amounts claimed.

Thus, in view of the aforesaid finding, it is being expressly held that the instant complaint is not maintainable as the aforementioned complainants lack the locus to file the instant complaint on behalf of all the residents of the concerned society without obtaining their approval/consent in the form of an authorization letter and also lacks evidences.



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Moreover, if any such claim on behalf of the residents/consumers exists, it must be claimed against Opposite Party No. 1, who is the builder of the concerned society and who has sought the single-point connection in its name from the distribution licensee, Opposite Party No. 4. This is in accordance with the Tariff Orders issued by the Hon'ble Commission, which state:

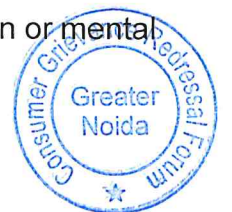
“The body seeking the supply at single point for bulk loads under this category shall be considered as a deemed franchisee of the Licensee.”

The maintenance agencies, Opposite Party No. 2 and Opposite Party No. 3, are merely agents of Opposite Party No. 1. Their obligation is limited to collecting electricity and other maintenance charges on behalf of Opposite Party No. 1 from the residents of the society.

In light of the directions issued by the Hon'ble Commission, the deemed franchisee, i.e., the body seeking bulk load at a single point, which in this case is Opposite Party No. 1, cannot escape its liability towards the end consumers, who are the ultimate consumers.

That regarding **relief/prayer no. 2**, neither any statutory law in form of any rule or regulation nor any direction by the Hon'ble Commission in the Tariff Orders being issued by them provide for any such kind of a relief and therefore in view of the aforesaid the complainants are not entitled to any such relief as this forum does not have the authority to award any amount on account of physical strain or mental agony as claimed by the complainants.


No Order as to Costs.



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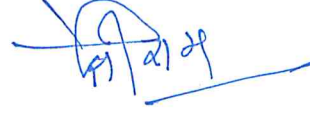
If the Complainants are aggrieved by this order, they can approach the Hon'ble Electricity Ombudsman, Lucknow as provided in the CGRF Regulations, 2022.

Accordingly, the complaint filed by the complainants is hereby dismissed.


Sanjiv Kumar Goel
(Chairman)
उपरोक्ता ब्यथा निवारण फोरम
कम्पनी स्तर, ग्रेटर नोएडा



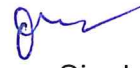
D.S. Pandey
(Independent Member)



Shri Dev Ram
(First Nominated Member)



A.D. Pandey
(Second Nominated Member)



Omveer Singh
(Prosumer)

Date: 25/07/2024
Place: Greater Noida

