

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 126 OF 2024

In the matter of accumulated excess billing

Arihant Aarohi CHS Ltd.Appellant
(Consumer No. 000402639164, 000402639181, 000402639156)

V/s.

Maharashtra State Electricity Distribution Co. Ltd..... Respondent No.1
Thane Urban Circle (MSEDCL)

Torrent Power Limited, Distribution Franchisee... Respondent No.2
Shil, Mumbra, Kalwa (TPL)

Arihant Superstructure Ltd..... Respondent No.3

Appearances:

Appellant 1. Sougata Mukherjee, Representative
2. Krishan Singh, Representative

Respondent No.1: Raman B. Datunwala, Addl. Ex. Engineer, TUC, MSEDCL

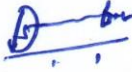
Respondent No.2 1. Rajesh S. Shanbhag, AGM, TPL
2. Mahesh Ghagare, Manager, TPL
3. Sameer Desai, Manager, TPL

Respondent No.3 Nimesh Shah, Director, Arihant Super Structure Ltd.

Coram: Vandana Krishna (IAS (Retd.))

Date of hearing: 24th September 2024

Date of Order : 21st October 2024


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Secretary
Electricity Ombudsman Mumbai



ORDER

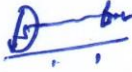
This Representation was filed on 4th July 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 3rd June 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum). The Forum principally rejected the grievance application in Case No. 145 of 2023-24. The operative part of the order is reproduced as below:

- “2. The Respondent is entitled to recover the bill of Rs. 1, 22,12,053/-along with applicable interest, DPC and penalty imposed thereon.*
- 3. The Respondent Utility is directed to give the installments for payment of the bill if the Applicant so desires.*
- 4. The Respondent Utility is directed to take action against the then employee for taking wrong entries of meter readings in the billing record.”*

The Forum observed that

“a meter is installed for recording accurate consumption. Therefore, when the consumption is shown on the meter, it cannot be waived of. So also, the Forum does not have any discretion power to waive of such a utilized consumption. Moreover, the electricity dues where they are statutory in character under the Act and therefore, the Forum holds that, the electricity dues cannot be waived of in view of the provisions of the Electricity Act 2003/ MERC Regulations. Therefore both builder, Arihant Superstructures Ltd (consumer) and the society , Arihant Arohi (Occupier /User) are individually and collectively liable /responsible to pay these dues as the bills are raised on the basis of actual readings received on the meters installed at consumer’s premises.”

2. The Appellant has filed this representation against the order of the Forum. A physical hearing was held on 24/09/2024. The Appellant and the Respondent 1, 2 & 3 attended the hearing. Parties were heard at length. The Respondent MSEDCL and its Franchisee, TPL filed their written replies dated 29/08/2024 and 20/08/2024 respectively. The Respondents’ submissions and arguments are


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stated first as below: - *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' where needed.]: -*

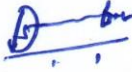
- (i) TPL has been appointed as Distribution Franchisee by the Respondent MSEDCL on 01.03.2020 for the purpose of operation and maintenance of electricity supply along with its billing to consumers in the area of Shil, Mumbra and Kalwa.
- (ii) Prior to the franchisee, the erstwhile MSEDCL released new electrical connections in the year 2018 for the Arihant Aarohi Phase 1 residential complex, having 207 residential flats and 18 commercial shops and three connections for common purpose of fire pump/jockey pump, lift A and B wing, club house, common lighting etc. as per applications of Arihant Superstructure Ltd.

The details of Consumer Numbers, sanctioned load, address, date of connections etc. of the common connections are tabulated as below:

Table 1:

Sr. No.	Name of Consumer	Consumer/ Service No.	San. Load (KW)	Address on Bill	Date of Supply
1	Arihant Superstructures Ltd.	00402639164	96.98	Firepump/ Jockey pump, S no. 18/1, 18/2 & 17/113, O Thane, shil-400 612	27-12-2018
2	Arihant Superstructures Ltd.	00402639181	105	Lift AB wing, Club house.S no. 18/1, 18/2 & 17/1B Thane Padle Shil - 400612	17-09-2018
3	Arihant Superstructures Ltd.	00402639156	35	STP/SC/SL, Survey no. 18/1, 18/2 & 1711B, O Bho Thane, Padle shil -400 612	17-09-2018

- (iii) TPL took over the DF area from 1st March 2020. The Covid Pandemic 2019 started from 20/03/2020. There was complete lockdown till June 2020. Thereafter only limited essential activities were allowed i.e. operation and maintenance of power


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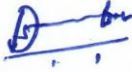


supply, as the supply position in this area was very critical. Therefore, certain activities like detailed site inspections, meter verifications and meter replacements etc. could not be carried out as per standards of performance. Thereafter, TPL started the regular activities including identification of average billing cases.

- (iv) The Respondent TPL inspected the premises of the Society on 30/11/2022 in the presence of the members of the Society. **During inspection it was observed for the first time that there was mismatching of meter numbers in the billing system and the actual meter numbers installed at the site of the Society. There was a huge difference between the bills issued and the actual recorded consumption on the meters.** The actual connected load was measured by Accucheck. The meters installed on site were tested and the test results of the meters found them in order. Also, MRI data of the meters was downloaded, and necessary photographs were also taken as a part of evidence. From the date of release of common purpose connections, there was mismatching of meter numbers in billing system and actual meter numbers, which resulted in average/wrong billing of these connections till 30/11/2022. The details of inspection are charted as below:

Table 2 :

Consumer/ Service No.	Meter Nos. in Billing System	Meter Nos. at Site	Technical Parameters observed							Load (KW)	Reading on 30.11.2022 (KWH)	Load used	Remarks
			Voltage (V1)	Voltage (V2)	Voltage (V3)	Current (I1) in Amp.	Current (I2)in Amp.	Current (I3) in Amp.					
00402639164	5500000055	X0680511	251	249	249	43.3	40.0	45.8	30	312560	Lifts 2, Club House [Air Conditioners 6, Tread Mills 4, Electric Cycles 2] Water Pumps 4 of 5 HP each.	As per society, water pump running for 5-6 hours in a day	
00402639181	5500000055	X0680513	249	259	249	19.7	12.5	13.3	20	234080	Water purification plant, Sewerage water plant, Common Lights,	Water purification plant is running for 22hrs.	
00402639156	05500000055	X0680514	251	248	249	40.1	27.2	32.5	36	170050	Immersion water heaters installed in the overhead water tankers on terrace of two wings, Fire Sprinklers Pumps etc.	Load running for 24Hrs.	


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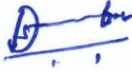


- (v) During this entire period, 'average' billing was being done, which was totally under billing. As per the site visit, the bill as per actual consumption up to Dec. 2022 was as below:

Table 3.

Consumer/ Service No.	Meter Nos. at Site	Readings on 30.11.2022 (KWH)	Readings on 21/12/2022 for Dec. 2022 (KWH)	Total Dues upto Dec. 2022 (Rs.)
00402639164	X0680511	312560	319298	5,13,9427
00402639181	X0680513	234080	239314	38,57,569
00402639156	X0680514	170050	184819	30,05,566
Total Dues upto Dec. 2022				1,20,02,562

- (vi) Based on the above details, a joint meeting was conducted on 01/02/2023 with the society's committee members in which all the details were explained to them. On the request of the Society Committee members, an inspection was again carried out on 03/02/2023. During the inspection, the connected load was found as already tabulated in Table 2.
- (vii) **As per the site visit and discussion with society members, a provisional bill as per actual consumption from Jan.2019 to Jan. 2023 amounting to Rs. 1,22,12,053/ was issued to the consumer and confirmed vide letter dated 16/02/2023.** Thereafter, TPL through a letter dated 16/03/2023 to the consumer/ society, informed them about the findings of the visit dated 03/02/2023, confirming the actual consumption recorded in the meters.
- (viii) Necessary debit for the consumed units was raised in the month of April 2023, slab benefit was also passed, and credit for the amount paid till date (for average based


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bills) was also adjusted in the bill to the consumer. The detailed calculations were submitted to the Society vide letter dated 26/04/2023. The abstract of these calculations are as below:

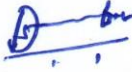
Table 4:

Total Dues upto Dec. 2022									
Consumer/ Service No.	Meter Nos.	Billing Period	Unit Charged (Units)	Actual Units consumed (Units)	Units Diff to be billed (Units)	Bill Amt. charged	Actual Bill Amt. to be charged	Difference	Remarks
1	2	3	4	5	6=5-4	7	8	9=8-7	10
00402639164	319298	Jan.2019 to Dec. 2022	4800	3,19,297	3,14,497	1,44,315	51,29,590	49,85,275	Note 1
00402639181	239314	Jan.2019 to Dec. 2022	4800	2,39,313	2,34,513	1,63,418	38,47,824	36,84,406	Note 2
00402639156	184818	Jan.2019 to Dec. 2022	314	1,84,818	1,84,504	55,078	28,98,631	28,43,553	Note 3
Total Dues upto Dec. 2022			9914	7,43,428	7,33,514	3,62,811	1,18,76,045	1,15,13,234	
Note 1	Actual cons. of 6680 units charged /month from Jan.'19 to Oct. '22, and 6697 & 5320 units in Nov.'22 & Dec. '22 respectively as per MRI Report.								
Note 2	Actual cons. of 5010 units charged /month from Jan.'19 to Oct. '22, and 5027 & 3826 units in Nov.'22 & Dec. '22 respectively as per MRI Report.								
Note 3	Actual cons. of 3686 units charged /month from Jan.'19 to Oct. '22, and 3686 & 11574 units in Nov.'22 & Dec. '22 respectively as per MRI Report.								

This table shows the huge difference between columns 4 and 5, i.e. units charged, and actual units consumed. Similarly, the huge difference between Columns 7 and 8, i.e. bills charged and actual bills due.

(ix) On 19/06/2023, the Society requested for bifurcation of the energy bill in two parts i.e.,

- from i.e. 2018 to May 2021 and
- Jun. 2021 till date wherein the Society has not raised a dispute on the bills, which was provided vide TPL letter dated 14/09/2023.


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[Note: The reason for this request was to bifurcate the bill for the developer / builder's period, and the society's period.]

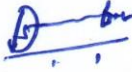
However, despite repeated reminders, the Society failed to pay the arrears. Hence, a reminder was given on 05/08/2023. The bifurcation in the energy bills was provided which is reproduced as below:

Table 5:

Consumer/ Service No.	Total Dues upto Dec. 2022 (Rs.)	Dues from 2018 to Sep. 2021	Dues from Sep. 2021 to Dec. 2022
00402639164	5,13,9427	30,74,957	20,64,470
00402639181	38,57,569	22,59,451	15,98,118
00402639156	30,05,566	1013	30,04,553
Total Dues	1,20,02,562	53,35,421	66,67,141

[Note: The Society requested for bifurcation for the period from 2018 to May 2021, and June 2021 to Dec. 2022. However, the above bifurcation did not tally with the required information.]

- (x) During this period, the consumer / builder Arihant Superstructure Ltd. has never interfered with or replied to the referred issues. TPL had also informed the Consumer/ Developer, Arihant Superstructure Ltd., through letter dated 29/08/2023 for recovery of these energy dues of Rs. 1,22,12,053/-. The connections were in the name of M/s. Arihant Superstructure Ltd. and the said services are in use by Arihant Aarohi CHS Ltd.
- (xi) The consumer had knowledge of the usage and of getting lesser bill, which shows that it was intentionally not disclosed/ informed to the utility for getting undue

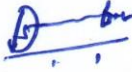

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benefits. If a consumer/ user is receiving bills continuously on an average basis, it is also his duty to inform the same to the utility and to urge for reading based bills.

(xii) **Point wise reply**

- The Arihant Aarohi CHS Ltd. was formed on 1st October 2018 and was paying bills regularly. Hence, it is necessary to consider that the society is in control of management of society affairs from the said date, hence the Society is responsible for the entire payment.
- **The Society neither complained to MSEDCL nor to TPL for average billing of merely 100 units per month against the huge usage on these common meters, including common lighting, 24 hrs. running immersion water heaters, club house/ gymnasium usage and water purification plants etc.**
- The connections are registered in the name of Arihant Superstructure Ltd. However the Society never applied for **change of name** to its own name.
- The Appellant Society pointed out that the builder Respondent No. 3, Arihant Superstructure Ltd. has malafide intentions, dishonest or fraudulent behavior towards the Society. Hence the electricity connections were not transferred in the name of the Society. The Society and Builder have their personal issues, because of which both are not showing interest to pay these bills.
- It is not correct to say that suddenly the society received a letter from the TPL dated 28/08/2023 for total due amount of Rs. 1,22,12,053/- of Jan.2023. As explained in detail, initially the meters were checked, tested and were found in order, and communicated with actual load. The Society was taken in confidence at each and every stage of joint inspection, joint meeting with the members. Accordingly, the Society had accepted their consumption, but refused to pay the dues for the part of the period pertaining to the Builder, and


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requested for bifurcation of bills for the period of the Builder and the Society, which was also provided to the Society.

- After that the Society reduced their load and started paying only the current monthly bills. The TPL made huge correspondence for recovery of outstanding dues vide letters dated 16/02/2023, 16/03/2023, 28/03/2023, 22/06/2023, 05/08/2023, 29.08.2023, etc. However, they refused to pay the genuine arrears.
- The Complainant is refusing to pay the said outstanding dues. The Complainant is only shifting the onus of payment to the builder, on the ground that he was paying the electricity bills for the period from **2018 to May 2021**, and thereafter Arihant Aarohi CHS Ltd. is running the Society and paying regular monthly bills. The fact is not denied that the electricity was used/ consumed by society, although the charge was with the Builder. Since the society took charge of the administration of building/ society's day to day activities and expenses, the society is liable for payment of these dues. Society had paid regular bills, but those bills were average bills and not the final bills. The society had requested for bifurcation of these dues, but even after receiving the breakups, they are not paying bills for their alleged part.
- As contended in the complaint, the principles of Regulation 14.4.1 of MERC Supply Regulations are not applicable, as the issue/problem is not in the meter, hence testing of the meter is not required. Still the meters were tested on site on the day of joint visit. These meters were checked in front of society members, which were found working within permissible limits, hence meter calibration or functionality is not under question. It is not the case that the meter is showing wrong reading. At present also the same meters are installed at the premises, and these can be checked. The issue of meter mismatch was well identified in our joint visit and rectified. Since then, reading based bills are

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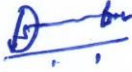
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issued. During the joint visit, society members had themselves observed that massive load was in use on these meters. Therefore, the revised readings-based bills issued are correct, and consumer/ users are responsible for the payment.

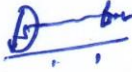
- Since the arrears are piling up, notices for disconnection under Section 56 (1) of the Electricity Act, 2003 (the Act) were issued every month. Follow up on statutory dues by sending regulatory notices cannot amount to and be considered as harassment and threatening. If the society wants time to arrange money to pay these dues, it is necessary to follow the proper procedure and apply for instalments.
- In the meeting held in Dec. 2023 with the society members, it was agreed by them that they would pay the current bills regularly, along with Rs. 1.5 lakhs per month against the arrears. Since they failed in this commitment, **the supplies were disconnected on 18/12/2023 and were reconnected on 22/12/2023 on payment of Rs. 1.5 lacks against arrears.** They also agreed to pay Rs. 1.5 lakhs additionally every month, but after this again they are paying only current dues, because of which the remaining dues are piling up with interest day by day.
- During the above said disconnected period, it was also observed that the users without intimation had illegally and unsafely removed/ diverted the load from the above services to other firefighting service meter, which is unsafe and an offence as described u/s. 138 (b) of the Act as "Interference with meters or works of licensee".

(xiii) The Appellant filed a grievance application in the Forum on 05/02/2024. Based on the arguments during hearing on 01/03/2024, the TPL gave additional submissions as under:


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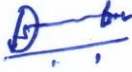
1. Meter Reading photographs obtained from 2021 to 2024 are enclosed. They show that the readings were taken based on the consumption.
 2. Society could have raised the issue, when they were getting average bill of 100 units every month for common facilities having total sanctioned load 86 KW. Society kept silent.
 3. If the society was formed in 2018, then why no application was made to change the name of the service from Builder to Society at the same time. This could have given dues clarity in 2018 itself.
 4. The meters are registered in the name of Arihant Superstructure Ltd. Therefore, every notice from TPL is addressed to Arihant Superstructure Ltd.
- (xiv) The Forum by its order dated 03/06/2024 principally rejected the grievance application. The operative part of the order is produced in Para First.
- (xv) The Respondent prays that the representation of the Appellant be rejected, and direct them to pay the outstanding dues/ arrears without any further delay.
3. The Appellant's submissions and arguments are stated as below:
- (i) The Appellant Arihant Aarohi CHS Ltd. Phase 1 was formed on 01/10/2018. The Society was regular in payment of electricity bills to MSEDCL and thereafter TPL from March 2020 onwards. *[Note: These were the disputed 'average' lower bills.]*
 - (ii) The society is consuming electricity for common purpose through the meters bearing Consumer No.000402639164, 000402639181 and 000402639156. The details of these connections are charted in Table 1. The electricity bills of the society are in the name of the builder, i.e. Arihant Superstructures Ltd. The Respondent No. 3, Builder of the Society was collecting maintenance from Society members and


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making the payment of electricity bills. Due to the builder's malafide intention and misconduct, the amenities including the electricity bills were not handed over to the Society.

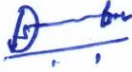
- (iii) On 29.08.2023, suddenly, the Appellant received a letter from TPL claiming electricity dues of three common connections amounting to Rs. 1,22,12,053/- on 29.08.2023. [Note: The TPL denied this date and claims that under billing was pointed out from 29/11/2022.]
- (iv) Respondent No. 3, Builder paid electricity bills up to May 2022, and thereafter, the Society is running the Society maintenance and is paying paid the electricity bills.
- (v) All common meters of these connections are easily accessible to the meter readers of the Respondent 1 & 2. As per Regulations 14. 4.1 Supply Code Regulations, 2005, the Distribution Licensee is responsible for the periodic testing and maintenance of all consumer meters. The MSEDCL and TPL never visited the society to take proper meter readings. The Respondent No. 1& 2 billed these connections of the Appellant on average basis, with reading not taken, meter inaccessible, lock, meter faulty etc.
- (vi) TPL is harassing the society and even disconnected the electricity supply in the month of December 2023. The society was forced to pay Rs. 1,50,000/- to restore the electricity. TPL is forcing the society to give in writing that, the society will pay the electricity bills in installments every month, else the supply will be disconnected. However, it is not possible to all the members to arrange the money every month. The TPL is sending notices to the society for disconnection of the electricity supply.
- (vii) The electricity bills are in the name of the Arihant Superstructure Ltd. i.e. the builders. Even the letter from TPL is addressed to the Arihant Superstructure Ltd,


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but they are harassing the society members.

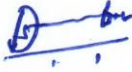
- (viii) The Builder had installed heaters in the Solar System which is provided to the Society. The Heaters were working continuously; however, the functioning of these heaters system was not intimated to the Society Members, which resulted in excess consumption. Hence, for this activity, the Builder is fully responsible, and he has to pay for it.
- (ix) The Respondent No.2 TPL issued an accumulated consumption bill for the period from 2018 to Dec. 2022 for more than 4 years for mismatching the meters. Section 56(2) of the Act provides that such sum due would not be recoverable after a period of two years from when such sum became first due. A Consumer has the right to receive correct bills as specified in the Electricity Supply Code notified by the MERC. The Licensee failed to do so. This is nothing but deficiency in service. **The TPL should not be permitted retrospective recovery of more than 24 months from the issue of these bills.**
- (x) The Appellant filed a grievance application in the Forum on 05/02/2024. The Forum by its order mainly rejected the grievance application. The Forum failed to understand that the Society is not liable to pay such huge bills for more than 4 years. The order of the Forum needs to be set aside in the interest of justice.
- (xi) in view of the above, the Appellant prays that the Respondent No. 2 be directed as below:
- to provide all the detailed bifurcation of alleged bills.
 - to stop sending disconnection notices to the society.
 - not to disconnect supply which is against the fundamental right as per Article 21 of the Constitution of India.
 - to accept the negligence of MSEDCL & TPL and to quash the bill of arrears of Rs.1,22,12,053/-.


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4. The Respondent No. 3 (builder's) submissions and arguments are as below:

- (i) The "Arihant Aarohi Phase 1" project was developed by an independent team of "Arihant Superstructures Ltd" at Plot No. 18/2, Padle Village, Thane. The project was started from January 2013 and completed in August 2018. A separate electric connection was taken for construction work of which all bills were paid and hence there are no outstanding dues.
- (ii) The occupation certificate (No. S11/0033/12/ TMC/TDD/OCC/0568 /18 from "Thane Municipal Corporation" was received on **06/08/2018**.
- (iii) Possession of flats for occupation to flat owners started immediately from the date of occupation certificate. Before taking the possession of flats, all flat owners i.e. Society members had deposited society maintenance amounts for 2/3 years with the Builder. A separate bank account was opened for maintenance purpose.
- (iv) The said buildings along with all flat purchasers' names were registered as members of "**Arihant Aarohi Phase 1 Co-op Housing Society Ltd.**" on **01/10/2018** by the Registrar office, Co-operative Societies Department, Thane after following all statutory formalities. There are 207 residential flats and 18 shops as members of Arihant Aarohi CHS Ltd.
- (v) The Developer applied for electrical connections for common purpose (lifts, water pump, club house, water purification plant, sewerage water plant, common lights, fire pump system etc.). Accordingly MSEDCL released these connections as tabulated in Table 1 in the name of Developer in the year 2018. The members of Arihant Aarohi CHS Ltd. are the occupiers and users of these connections. Limited funds were initially collected from the members which **are solely used for the Society maintenance and payment of electricity bills**. The Flat Owners and


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Promoters entered into an agreement as per prescribed agreement format of Cooperative Society Act of Govt. of Maharashtra.

- (vi) This was the transient period of handing over the immovable and movable assets to the Society and registration process of the Society.
- (vii) The Respondent No. 3 (Developer) referred to the definition of consumer. **The Section 2 of the Act** is clearly defined. "Consumer" means any person who is supplied with electricity for his own use by a licensee, and **includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee.**
- (viii) Electricity Supply Code Regulations 2005/ Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021) defines the **Occupier** which reads as below: -

2.2(l) "Occupier" means the person in occupation of the premises where energy is used or is proposed to be used.

It means that the occupier of the premises is the user of the electricity.

As per section 2 (15) of the Act and Regulation 2.2 (l) of Supply Code & SOP Regulations 2021 "**Arihant Aarohi CHS Ltd.** " are the consumers as tabulated in Table 1 in the true sense. Since the Society was not registered at the time of application of new electric connections for common purpose, they were applied in the name of the Developer as "Arihant Superstructures Ltd." This is a technical part, however, **Arihant Aarohi CHS Ltd. is the occupier and user therefore are the consumers of the Licensee MSEDCL.**



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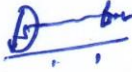
- (ix) The Respondent No. 3 (Developer) referred the paras of "Maharashtra Government Gazette" dated 24th February 2014 regarding the responsibility of the promoter of a proposed cooperative society.

"5 (i) It shall be the responsibility of the promoter to provide essential services such as water supply, electricity, light in passages and staircases, lifts and sanitary services as per agreement to the flat purchasers or unit holders of the building or flat or to any person in authorised occupation thereof till such time and in such manner as specified in the agreement of sale and such services shall not, except with just and sufficient notice, be cut-off, withheld, or curtailed. The aforesaid responsibility is subject to the service provider providing the same. If the service provider is unable to provide the aforesaid services, then the promoter shall not be responsible to provide the same.

(ii)

(iii) If the allottee or flat or unit purchaser or organization fails to pay the outgoings to the promoter, which are payable by the allottee or flat or unit purchaser or organization under this Act, for a period of more than three months, then the promoter may approach the Competent Authority, who may, after giving notice of not less than seven days to such allottee or flat or unit purchaser or organization, as the case may be, cut-off, withhold or in any manner curtail or reduce any essential supply or service enjoyed by such allottee or flat or unit purchaser or organization in the project."

12. The promoter shall maintain building-wise separate account in maintain any bank of sums taken, by him, from persons intending to take or account Separate of who have taken flats, deposits including any sums so taken towards sums taken the

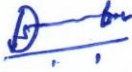

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share capital for the formation of co-operative society or a company as advance or towards the outgoings, including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, trustee revenue assessment, interest on any mortgage or other encumbrances, therefor if any; and he shall hold the said moneys for the purposes for which and they were given and shall disburse the moneys for those purposes and disburse shall, on demand them for in writing by an officer appointed, by general or special purposes order, by the State Government for the purpose, make full and true for which disclosure of all transactions in respect of that account.

13. A promoter, while he is in possession and where he collects from persons, who have taken over flats or are to take over flats, sums for the payment of outgoings, shall pay all outgoings, including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or is other encumbrances, if any, until he transfers the property to the persons taking over the flats, or to the organization of any such persons. Where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organization of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and shall be responsible for any legal proceedings which may be initiated by such authority or person.”

- (x) The Developer has opened a separate bank account named “**Arihant Aarohi CHS Ltd. (Proposed)** in SVC Co-operative Bank Ltd. Vashi Branch (A/c No. CA GEN/


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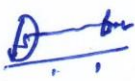
107904180000139). This bank account was opened by Chief Promoter/Developer as per the relevant Co-operative Societies Byelaws and as per specific directives of Co-Operative Registrar's Office of Govt. of Maharashtra.

- (xi) It is a known fact that for the intervening period between occupancy certificate and handing over of the management of society's day to day affairs to the managing committee, the developer collects maintenance funds (Corpus fund) from each flat owners/ members. In such intervening period, a developer acts as the society manager on behalf of the flat owners, till the formation of the managing committee is done.
- (xii) **The Bank A/c. was maintained by the Developer up to May 2021 and the Society started its maintenance from June 2021 onwards.** The Developer has made all statutory payments to date including the payment of electricity bills for common connections.
- (xiii) **It has been expressly stated vide Undertaking given by each individual flat owners** i.e. society members as below:

“The Builder shall not be liable to make payments towards the maintenance charges including electricity and water bills, service charges including property management services, security expenses, housekeeping expenses, taxes, levies etc. for the period from the date of the first possession of any unit/flat/shop in the project. The Purchaser hereby agrees for the same.

.....

The purchaser individually and collectively as a society agrees to coordinate with and make payments of all agencies and service providers of the society for its facilities like electricity provider, electrician, plumber ----- , housekeeping, as for

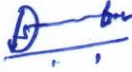

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all such services engaged for maintaining and up keeping of the building/complex/society etc. and shall not hold the builder liable for the same”.

- (xiv) It has been **expressly agreed vide Declaration cum Indemnity bond** given by each society member **that all payments for MSEB bills of lifts, pumps, common lightings etc. shall be paid from the society maintenance account.**
- (xv) Most importantly, it has been **expressly stated in the MahaRera Act & Rules - Model Agreement for Sale, clauses 7.1, 7.3, 9.3, that it is the responsibility of Allotee (flat purchaser/owner) to pay maintenance charges including common area lighting & power bills.**
- (xvi) As mentioned in TPL office letter dated 13/10/2023, managing committee of the society took over the **society maintenance and the bank account from Arihant Superstructures Ltd. on May 2021, but does this imply that society was not the consumer/occupier for the period before May 2021?**
- (xvii) From June 2021 till Dec 2022, society members were aware about the average billing issue, as they themselves were paying the bills every month. In fact, society members were aware about the bills of these common meters even from September 2018 to June 2021, and all accounting ledgers of the society maintenance account were checked by them.
- (xviii) There is collusion between the officials of TPL and Society Members. TPL started blackmailing the developers and took an illegal undertaking under pressure; such undertakings are not as per law and are denied in toto.
- (xix) Society has frequently argued: - *“Builder had installed the Heater and solar system in the society without intimating any of the society members the electricity bill to the society”.*

Facts of the matter:

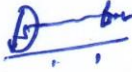

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- a) The order for supply, installation, testing and commissioning of evacuated tube solar water heater system was issued to “Kosun Renewable Energies Pvt. Ltd.” by the developer on 15/3/2017 and work was completed before the Occupancy Certificate date.
- b) Usage of hot water from solar system by society members started after the possession of flats. In 2021, a complaint was raised by the society regarding less quantum of hot water available, especially in rainy seasons. It is a known fact that solar hot water systems are to be installed and used for only bathing purposes, and the production of hot water is very less/negligible during the rainy season.
- c) On insistence of the society to have hot water for 24x7x365 days, the developer had to issue an additional order for installation of electric heaters with thermostats inside the solar hot water storage tanks in 2021. It was commissioned and payments done on 28/2/2022.
- (xx) The Respondent No.3 cited provisions of Regulations 16.9.2 of Supply Code & SOP Regulations 2020 which is reproduced as below:.

16.9.2. No sum due from any Consumer shall be recoverable after the period of Two (2) years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied as per Section 56 (2) of the Act except for permanently disconnected Consumer.

From the above regulation, it is quite clear that arrears can be recovered for a maximum period of 2 years only i.e. from Dec 2020 to Dec 2022 (as never did any bills prior to Dec 2022 reflect any sum as outstanding arrears.)


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- (xxi) On study of the past years' meter bills, below are the brief details for the 3 disputed connections from August 2020 to Dec 2022.

Meter no 000402639156

Period	Bill type	Remarks
Aug 2020 to Dec 2021	Normal bill (reading bill)	No note on the bills of average consumption, and a few bills "Normal"
Jan 2022 to Dec 2022	Average consumption bills	Note of "This bill is generated as per average consumption and same will be reversed when actual reading obtained"

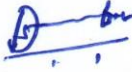
Meter no 000402639181

Period	Bill type	Remarks
Aug 2020 to April 2021	Normal bill (reading bill)	Note on a few bills such as 'faulty', and a few bills "Normal"
May 2021 to Dec 2022	Average consumption bills	Note of "This bill is generated as per average consumption and same will be reversed when actual reading obtained"

Meter no 000402639164

Period	Bill type	Remarks
Aug 2020 to April 2021	Normal bill (reading bill)	Note on the bills such as 'faulty' except of average consumption bill / faulty/ meter not working etc., and a few bills "Normal"
May 2021 to Dec 2022	Average consumption bills	Note of "This bill is generated as per average consumption and same will be reversed when actual reading obtained"

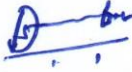
So the period for 'average basis' bills (i.e. under-billing) is May 2021 to Dec 2022 for consumer numbers 000402639164 and 000402639181, and for consumer no


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000402639156 it is Jan 2022 to Dec 2022, and not since their release date i.e. 17/9/2018. **TPL should have raised outstanding arrears for the above limited period only.** Pandemic restrictions were lifted for all routine works from July 2021, so they could have done site inspection then. Moreover, these 3 meters are installed in same premises where other individual flat meters are located. So, when the meter readings were taken for all 230 meters including these 3 common meters from March 2020 by TPL staff, then it is difficult to understand what prevented them to rectify the error of meter readings for such a long period of 30 months.

- (xxii) If the said meters were faulty, then why were no efforts made to rectify/ install new meters. As per section 16.4.1 of MERC Supply code 2021- in case of a defective meter, the Consumer should be billed for a maximum period of three months.
- (xxiii) **Some Occupiers/ Owners have not transferred these electric connections in their names within reasonable period.** This is not the responsibility of the Developer in case of defaulters in payment of electricity bills.
- (xxiv) How is the Developer responsible for the deficiency in services of the Licensees (MSEDCL/ Franchisee TPL)? Why had these licensees delivered wrong bills for more than four years?
- (xxv) Respondent No. 3 (developer) has put on record that the amount collected from the flat purchasers towards maintenance charges was around Rs.1.855 crores and the expenses was around Rs.1.847 crores. The balance in the bank account was about Rs.80,000/-.
- (xxvi) Prayer : The Respondent No. 3 prays that
- A) TPL be directed to remove the name of M/s. Arihant Superstructures Ltd from the list of defaulters.
 - B) TPL be directed to change the name on electricity bills of these 3 meters to Arihant Aarohi Phase 1 Co-op Housing Soc Ltd.


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C) TPL be directed to revise the outstanding arrears amount of these 3 meters as per relevant rules of Supply Code & SOP Regulations 2021 i.e. for the period from Dec 2020 to Dec 2022, and to issue the same in the name of the society.

5. The parties were directed to discuss for an amicable settlement with regard to the share of the developer and society in the arrears. However, no settlement could be reached.


Analysis and Ruling

6. Heard the parties and perused the documents on record. According to the Appellant-Society, this is basically a dispute between the developer and the Cooperative Housing Society as to who is responsible to pay the arrears of the three common area bills, and for what period. There is no dispute that this electricity was actually consumed, but was not billed due to wrong recording of the meter numbers in the billing system.

7. We have studied the CPL of the Appellant right from inception when the first bill was issued. It shows the consumption pattern for the three common area connections as below: -

Table 6

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Consumer/ Service No. 00402639164															
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)	Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	R.N.T.	26-01-2019	0	0	100	35	NOV-21	5500000055	Faulty	21-11-2021	0	0	100
2	FEB-19	5500000055	R.N.T.	26-02-2019	0	0	100	36	DEC-21	5500000055	Faulty	21-12-2021	0	0	100
3	MAR-19	5500000055	Replace	25-03-2019	0	0	100	37	JAN-22	05500000055	Faulty	21-01-2022	0	0	100
4	APR-19	5500000055	R.N.T.	26-04-2019	0	0	100	38	FEB-22	05500000055	Faulty	21-02-2022	0	0	100
5	MAY-19	5500000055	R.N.T.	25-05-2019	0	0	100	39	MAR-22	05500000055	Faulty	21-03-2022	0	0	100
6	JUN-19	5500000055	Replace	25-06-2019	0	0	100	40	APR-22	05500000055	Faulty	21-04-2022	0	0	100
7	JUL-19	5500000055	Locked	26-07-2019	0	0	100	41	MAY-22	05500000055	Faulty	21-05-2022	0	0	100
8	AUG-19	5500000055	R.N.T.	24-08-2019	0	0	100	42	JUN-22	05500000055	Faulty	21-06-2022	0	0	100
9	SEP-19	5500000055	R.N.T.	24-09-2019	0	0	100	43	JUL-22	05500000055	Faulty	21-07-2022	0	0	100
10	OCT-19	5500000055	R.N.T.	25-10-2019	0	0	100	44	AUG-22	05500000055	Faulty	21-08-2022	0	0	100
11	NOV-19	5500000055	R.N.T.	26-11-2019	0	0	100	45	SEP-22	05500000055	Faulty	21-09-2022	0	0	100
12	DEC-19	5500000055	R.N.T.	25-12-2019	0	0	100	46	OCT-22	05500000055	Faulty	21-10-2022	0	0	100
13	JAN-20	5500000055	R.N.T.	26-01-2020	0	0	100	47	NOV-22	05500000055	Faulty	21-11-2022	0	0	100
14	FEB-20	5500000055	R.N.T.	24-02-2020	0	0	100	48	DEC-22	05500000055	Faulty	21-12-2022	0	0	100
15	MAR-20	5500000055	R.N.T.	24-03-2020	0	0	100	49	JAN-23	05500000055	Normal	21-01-2023	329495	319298	10197
16	APR-20	5500000055	R.N.T.	24-04-2020	0	0	100	50	FEB-23	05500000055	Normal	21-02-2023	338126	329495	8631
17	MAY-20	5500000055	R.N.T.	24-05-2020	0	0	100	51	MAR-23	05500000055	Normal	21-03-2023	347779	338126	9653
18	JUN-20	5500000055	Inaccessible	24-06-2020	0	0	100	52	APR-23	05500000055	Normal	21-04-2023	357177	347779	9398
19	JUL-20	5500000055	Inaccessible	24-07-2020	0	0	100	53	MAY-23	05500000055	Normal	21-05-2023	367418	357177	10241
20	AUG-20	5500000055	Inaccessible	24-08-2020	0	0	100	54	JUN-23	05500000055	Normal	21-06-2023	376351	367418	8933
21	SEP-20	5500000055	R.N.T.	24-09-2020	0	0	100	55	JUL-23	05500000055	Normal	21-07-2023	384973	376351	8622
22	OCT-20	5500000055	R.N.T.	21-10-2020	0	0	100	56	AUG-23	05500000055	Normal	21-08-2023	394287	384973	9314
23	NOV-20	5500000055	R.N.T.	21-11-2020	0	0	100	57	SEP-23	05500000055	Normal	21-09-2023	403405	394287	9118
24	DEC-20	5500000055	R.N.T.	21-12-2020	0	0	100	58	OCT-23	05500000055	Normal	21-10-2023	411922	403405	8517
25	JAN-21	5500000055	Faulty	21-01-2021	0	0	100	59	NOV-23	05500000055	Normal	21-11-2023	420423	411922	8501
26	FEB-21	5500000055	Faulty	21-02-2021	0	0	100	60	DEC-23	05500000055	Normal	21-12-2023	426168	420423	5745
27	MAR-21	5500000055	Faulty	21-03-2021	0	0	100	61	JAN-24	05500000055	Normal	21-01-2024	434610	426168	8442
28	APR-21	5500000055	Faulty	21-04-2021	0	0	100	62	FEB-24	05500000055	Normal	21-02-2024	442357	434610	7747
29	MAY-21	5500000055	Faulty	21-05-2021	0	0	100	63	MAR-24	05500000055	Normal	21-03-2024	449292	442357	6935
30	JUN-21	5500000055	Faulty	21-06-2021	0	0	100	64	APR-24	05500000055	Normal	23-04-2024	458358	449292	9066
31	JUL-21	5500000055	Faulty	21-07-2021	0	0	100	65	MAY-24	05500000055	Normal	22-05-2024	466069	458358	7711
32	AUG-21	5500000055	Faulty	21-08-2021	0	0	100	66	JUN-24	055X0680511	Normal	22-06-2024	474658	473698	8589
33	SEP-21	5500000055	Faulty	21-09-2021	0	0	100	67	JUL-24	055X0680511	Normal	20-07-2024	482180	474658	7522
34	OCT-21	5500000055	Faulty	21-10-2021	0	0	100	68	AUG-24	055X0680511	Normal	22-08-2024	491080	482180	8900



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Table 7:

Consumer/ Service No. '00402639181															
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)	Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	R.N.T.	26-01-2019	0	0	100	35	NOV-21	5500000055	Faulty	21-11-2021	0	0	100
2	FEB-19	5500000055	R.N.T.	26-02-2019	0	0	100	36	DEC-21	5500000055	Faulty	21-12-2021	0	0	100
3	MAR-19	5500000055	Replace	25-03-2019	0	0	100	37	JAN-22	05500000055	Faulty	21-01-2022	0	0	100
4	APR-19	5500000055	R.N.T.	26-04-2019	0	0	100	38	FEB-22	05500000055	Faulty	21-02-2022	0	0	100
5	MAY-19	5500000055	Inaccessible	26-05-2019	0	0	100	39	MAR-22	05500000055	Faulty	21-03-2022	0	0	100
6	JUN-19	5500000055	Replace	25-06-2019	0	0	100	40	APR-22	05500000055	Faulty	21-04-2022	0	0	100
7	JUL-19	5500000055	Locked	26-07-2019	0	0	100	41	MAY-22	05500000055	Faulty	21-05-2022	0	0	100
8	AUG-19	5500000055	R.N.T.	24-08-2019	0	0	100	42	JUN-22	05500000055	Faulty	21-06-2022	0	0	100
9	SEP-19	5500000055	R.N.T.	24-09-2019	0	0	100	43	JUL-22	05500000055	Faulty	21-07-2022	0	0	100
10	OCT-19	5500000055	R.N.T.	25-10-2019	0	0	100	44	AUG-22	05500000055	Faulty	21-08-2022	0	0	100
11	NOV-19	5500000055	R.N.T.	26-11-2019	0	0	100	45	SEP-22	05500000055	Faulty	21-09-2022	0	0	100
12	DEC-19	5500000055	R.N.T.	25-12-2019	0	0	100	46	OCT-22	05500000055	Faulty	21-10-2022	0	0	100
13	JAN-20	5500000055	R.N.T.	26-01-2020	0	0	100	47	NOV-22	05500000055	Faulty	21-11-2022	0	0	100
14	FEB-20	5500000055	R.N.T.	24-02-2020	0	0	100	48	DEC-22	05500000055	Faulty	21-12-2022	0	0	100
15	MAR-20	5500000055	R.N.T.	24-03-2020	0	0	100	49	JAN-23	05500000055	Normal	21-01-2023	246391	239314	7077
16	APR-20	5500000055	R.N.T.	24-04-2020	0	0	100	50	FEB-23	05500000055	Normal	21-02-2023	252841	246391	6450
17	MAY-20	5500000055	R.N.T.	24-05-2020	0	0	100	51	MAR-23	05500000055	Normal	21-03-2023	257160	252841	4319
18	JUN-20	5500000055	Inaccessible	24-06-2020	0	0	100	52	APR-23	05500000055	Normal	21-04-2023	262757	257160	5597
19	JUL-20	5500000055	Inaccessible	24-07-2020	0	0	100	53	MAY-23	05500000055	Normal	21-05-2023	267550	262757	4793
20	AUG-20	5500000055	Inaccessible	24-08-2020	0	0	100	54	JUN-23	05500000055	Normal	21-06-2023	273772	267550	6222
21	SEP-20	5500000055	R.N.T.	24-09-2020	0	0	100	55	JUL-23	05500000055	Normal	21-07-2023	277816	273772	4044
22	OCT-20	5500000055	R.N.T.	21-10-2020	0	0	100	56	AUG-23	05500000055	Normal	21-08-2023	284857	277816	7041
23	NOV-20	5500000055	R.N.T.	21-11-2020	0	0	100	57	SEP-23	05500000055	Normal	21-09-2023	290655	284857	5798
24	DEC-20	5500000055	R.N.T.	21-12-2020	0	0	100	58	OCT-23	05500000055	Normal	21-10-2023	296162	290655	5507
25	JAN-21	5500000055	Faulty	21-01-2021	0	0	100	59	NOV-23	05500000055	Normal	21-11-2023	303261	296162	7099
26	FEB-21	5500000055	Faulty	21-02-2021	0	0	100	60	DEC-23	05500000055	Normal	21-12-2023	308023	303261	4762
27	MAR-21	5500000055	Faulty	21-03-2021	0	0	100	61	JAN-24	05500000055	Normal	21-01-2024	314373	308023	6350
28	APR-21	5500000055	Faulty	21-04-2021	0	0	100	62	FEB-24	05500000055	Normal	21-02-2024	317303	314373	2930
29	MAY-21	5500000055	Faulty	21-05-2021	0	0	100	63	MAR-24	05500000055	Normal	21-03-2024	319654	317303	2351
30	JUN-21	5500000055	Faulty	21-06-2021	0	0	100	64	APR-24	05500000055	Normal	23-04-2024	322219	319654	2565
31	JUL-21	5500000055	Faulty	21-07-2021	0	0	100	65	MAY-24	05500000055	Normal	22-05-2024	324450	322219	2231
32	AUG-21	5500000055	Faulty	21-08-2021	0	0	100	66	JUN-24	055X0680513	Normal	22-06-2024	327434	327123	2984
33	SEP-21	5500000055	Faulty	21-09-2021	0	0	100	67	JUL-24	055X0680513	Normal	20-07-2024	329997	327434	2563
34	OCT-21	5500000055	Faulty	21-10-2021	0	0	100	68	AUG-24	055X0680513	Normal	22-08-2024	332779	329997	2782

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Table 8 :

Consumer/ Service No. 00402639156															
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)	Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	Normal	25-01-2019	1	0	1	35	NOV-21	5500000055	Normal	21-11-2021	67	67	0
2	FEB-19	5500000055	Normal	25-02-2019	1	1	0	36	DEC-21	5500000055	R.N.T.	21-12-2021	67	67	19
3	MAR-19	5500000055	Replace	25-03-2019	1	1	0	37	JAN-22	05500000055	R.N.T.	21-01-2022	67	67	19
4	APR-19	5500000055	Normal	25-04-2019	1	1	0	38	FEB-22	05500000055	R.N.T.	21-02-2022	67	67	19
5	MAY-19	5500000055	Inaccessible	26-05-2019	1	1	100	39	MAR-22	05500000055	R.N.T.	21-03-2022	67	67	19
6	JUN-19	5500000055	Replace	25-06-2019	1	1	100	40	APR-22	05500000055	Faulty	21-04-2022	67	67	19
7	JUL-19	5500000055	Locked	26-07-2019	1	1	100	41	MAY-22	05500000055	Faulty	21-05-2022	67	67	19
8	AUG-19	5500000055	R.N.T.	25-08-2019	1	1	100	42	JUN-22	05500000055	Faulty	21-06-2022	67	67	19
9	SEP-19	5500000055	Normal	24-09-2019	1	1	0	43	JUL-22	05500000055	Faulty	21-07-2022	67	67	19
10	OCT-19	5500000055	Normal	25-10-2019	1	1	0	44	AUG-22	05500000055	Faulty	21-08-2022	67	67	19
11	NOV-19	5500000055	Normal	26-11-2019	1	1	0	45	SEP-22	05500000055	Faulty	21-09-2022	67	67	19
12	DEC-19	5500000055	R.N.T.	25-12-2019	1	1	100	46	OCT-22	05500000055	Faulty	21-10-2022	67	67	19
13	JAN-20	5500000055	R.N.T.	25-01-2020	1	1	100	47	NOV-22	05500000055	Faulty	21-11-2022	67	67	19
14	FEB-20	5500000055	Normal	24-02-2020	18	1	17	48	DEC-22	05500000055	Faulty	21-12-2022	67	67	19
15	MAR-20	5500000055	R.N.T.	24-03-2020	18	18	5	49	JAN-23	05500000055	Normal	21-01-2023	207866	184819	23047
16	APR-20	5500000055	R.N.T.	24-04-2020	18	18	5	50	FEB-23	05500000055	Normal	21-02-2023	214757	207866	6891
17	MAY-20	5500000055	R.N.T.	24-05-2020	18	18	5	51	MAR-23	05500000055	Normal	21-03-2023	214757	214757	0
18	JUN-20	5500000055	Inaccessible	24-06-2020	18	18	5	52	APR-23	05500000055	Normal	21-04-2023	214757	214757	0
19	JUL-20	5500000055	Inaccessible	24-07-2020	18	18	5	53	MAY-23	05500000055	Normal	21-05-2023	214757	214757	0
20	AUG-20	5500000055	Inaccessible	24-08-2020	18	18	5	54	JUN-23	05500000055	Normal	21-06-2023	214757	214757	0
21	SEP-20	5500000055	Normal	24-09-2020	47	18	29	55	JUL-23	05500000055	Normal	21-07-2023	214757	214757	0
22	OCT-20	5500000055	Normal	21-10-2020	47	47	0	56	AUG-23	05500000055	Normal	21-08-2023	214757	214757	0
23	NOV-20	5500000055	Normal	21-11-2020	48	47	1	57	SEP-23	05500000055	Normal	21-09-2023	214757	214757	0
24	DEC-20	5500000055	Normal	21-12-2020	48	48	0	58	OCT-23	05500000055	Normal	21-10-2023	214757	214757	0
25	JAN-21	5500000055	Normal	21-01-2021	67	48	19	59	NOV-23	05500000055	Normal	21-11-2023	214757	214757	0
26	FEB-21	5500000055	Normal	21-02-2021	67	67	0	60	DEC-23	05500000055	Normal	21-12-2023	214757	214757	0
27	MAR-21	5500000055	Normal	21-03-2021	67	67	0	61	JAN-24	05500000055	Normal	21-01-2024	214757	214757	0
28	APR-21	5500000055	Normal	21-04-2021	67	67	0	62	FEB-24	05500000055	Normal	21-02-2024	214757	214757	0
29	MAY-21	5500000055	Normal	21-05-2021	67	67	0	63	MAR-24	05500000055	Normal	21-03-2024	214757	214757	0
30	JUN-21	5500000055	Normal	21-06-2021	67	67	0	64	APR-24	05500000055	Normal	23-04-2024	214757	214757	0
31	JUL-21	5500000055	Normal	21-07-2021	67	67	0	65	MAY-24	05500000055	Normal	22-05-2024	214757	214757	0
32	AUG-21	5500000055	Normal	21-08-2021	67	67	0	66	JUN-24	055X0680514	Normal	22-06-2024	214757	214757	0
33	SEP-21	5500000055	Normal	21-09-2021	67	67	0	67	JUL-24	055X0680514	Normal	20-07-2024	214757	214757	0
34	OCT-21	5500000055	Normal	21-10-2021	67	67	0	68	AUG-24	055X0680514	Normal	22-08-2024	214757	214757	0

From the above tables, it is clear that no proper readings were taken till Dec.2022, and billing was done on an adhoc basis, assuming average consumption of only 100 units per month. There can be no doubt that the society was aware of this fact, but chose to keep mum. MSEDCL


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 Secretary
 Electricity Ombudsman Mumbai



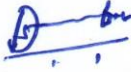
and TPL also neglected to rectify this mistake. Collusion in this regard with the ground staff or the meter reading staff cannot be ruled out.


8. The Respondent TPL inspected the premises of the Society on 30/11/2022 in the presence of the members of the Society, when it was observed that there was mismatching of meter numbers in the billing system and actual meter numbers installed at the site of the Society. There was huge difference between the bills issued and the actual recorded consumption on the meter. TPL initiated a joint inspection of the premises on 30/11/2022 along with members of the Society. The actual connected load was measured by Accucheck. The meters were tested and found in order. MRI data of the meters was downloaded and necessary photographs were also taken as a part of evidence.

9. The society submitted that Arihant Aarohi CHS Ltd. was formed on 01.10.2018, and the builder was paying the electricity bills from 2018 to May 2021. Thereafter Arihant Aarohi CHS Ltd. is handling the society maintenance and paying the electricity bills regularly. Basically the society claims that the arrears up to May 2021 are the responsibility of the builder.

10. But even after taking over the affairs of the society from June 2021, the society has not changed the name on the common utility connections of the society. Further, it was expected from the Society that the proportionate accumulated bills from June 2021 should be paid by the society, while the bills up to May 2021 should be borne by Arihant Superstructures Ltd. Even though the Respondent has bifurcated the bill accordingly, neither the builder nor the society has paid the bill. As a result, interest is piling up and the arrears are increasing. As per the site visit and discussion with society members, the bill as per actual consumption till the month of Jan' 23 amounting to Rs.1,22,12,053/- was issued to the consumer and confirmed vide letter dated 16/02/2023.

11. The Section 2 (15) of the Act defines a consumer as


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(15) "Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be; (Emphasis added)

Accordingly, The Supply Code Regulations 2005 define 'Occupier' as below:-

"2(s) "Occupier" means the person in occupation of the premises where energy is used or is proposed to be used."

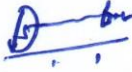
From the above definitions of 'consumer' and 'occupier', it is clear that an occupier is the implied consumer. In this case the Appellant Society is the implied consumer. The Appellant has the status of a deemed consumer from the formation of the Society i.e. from the date of connection.

The following issues are framed for consideration of the case.

Issue 1: Whether the Respondent No. 1 & 2 are entitled to recover the bill of Rs. 1, 22,12,053/- (including the bill of Jan.2023, and accumulated consumption bill of Rs. 1,15,13,234/- for the period from Jan. 2019 to Dec. 2022 (48 months) as tabulated in Table 4 ?

➤ The Section 56 (2) of the Act is reproduced below:

"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."


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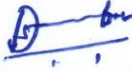


This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Hon'ble Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

- The Hon'ble Supreme Court in its Judgment dated 05/10/2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of **escaped billing**. The important paras of this Judgement are reproduced below:

“21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.” (Emphasis added)

It is important to note that in the above Judgment, the assessment period for escaped billing is applied for **about three years**. In the instant case, the Respondent has


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issued a supplementary bill towards accumulated consumption **for the period from Jan. 2019 to Dec.2022 which is four years.**


The Respondent discovered the mistake of under billing when the premises were inspected **on 30.11.2022 in the presence of the Appellant. The Respondent immediately prepared the supplementary bill up to Dec. 2022. The cause of action occurred in Dec. 2022.** The Limitation Act, 1963 describes that a suit can be filed within 3 years from the date of cause of action. In the instant case, a suit has not been filed; however, it similarly applies that action has **to be taken at least within the prescribed period of limitation of three years.**

Hence, we hold that retrospective recovery towards accumulated consumption should be **limited to three years counting from the date of detection of mistake / cause of action.** Therefore, we hold that in the instant case, the valid recovery period **of escaped billing is 36 months** retrospectively, i.e., **from Jan. 2020 to December 2022.**

Hence, Issue 1 is answered accordingly.

Issue 2: Whether it is the Appellant Society and/or Respondent No. 3, Arihant Superstructure Ltd. who are bound to pay the revised bill?

- Though the meters are registered in the name of M/s. Arihant Superstructures Ltd., as per the joint site visit dated 03/02/2023 the said services are in use by Arihant Aarohi CHS Ltd. who is the implied consumer as discussed above. **The arrears are on the premises and hence we hold that it is the Society which has to pay these outstanding dues.**
- There is a dispute between the society and the Developer as regards to handing over of assets etc. which was reflected in the hearing. The Society claims that the builder is liable to pay the arrears up to May 2021, while the builder denies this. So far the parties have


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failed to reach a settlement on this issue. The Society was registered on 01/10/2018 and the role of the Developer was that of Chief Promoter. Respondent No. 3 (developer) has put on record that the amount collected from the flat purchasers towards maintenance charges was around Rs.1.855 crores, and the expenses were around Rs.1.847 crores. The balance in the bank account was about Rs.80,000/-. Both the parties were advised to sit together and reconcile their Corpus fund as well as maintenance charges accounts in a transparent manner. It was also confirmed with TPL that there was no pending outstanding bill of the Developer relating to the construction period. However, this issue does not come under the jurisdiction of this quasi-judicial authority.

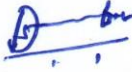
Hence, Issue 2 is answered accordingly.

12. However, in the interest of settling the matter, Respondent No.3 (developer) was requested to accept some part of the payment of the said bill voluntarily, and the developer has reciprocated by agreeing to pay Rs.5 lakhs out of the pending bill amount of Rs. 1.15 crores. This amount should be paid to the Respondent No. 2, TPL against the pending bill (after revision as directed below) voluntarily, giving some relief to the Appellant society.

13. Considering the facts and circumstances of the case, the Forum's order is modified as below:

The Respondent is directed as under: -

- a) to revise the bill of Rs. 1,15,13,234/- only for the period of Jan. 2020 to Dec. 2022 for 36 months instead of 48 months, and by waiving of the entire interest and delayed payment charges from Jan 2023 till the date of this order.
- b) to allow the Appellant to pay the revised bill in 36 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.


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- c) Compliance to be submitted within two months from the date of issue of this order.
- d) The other prayers of the Appellant are rejected.

14. The Representation is disposed of accordingly.

15. The secretariat of this office is directed to refund Rs.25000/- taken as deposit to the Respondent for adjusting in the Appellant's ensuing bill.

Sd/
Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

