

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 22 of 2020

Date of Order: 30.09.2022

Petition under Section 43 of E.A 2003 read with Supply Code (2014) Reg 5.1 in the matter refusal by the Licensee to release electricity connections to some residents of Shivalik City, Kharar, Distt Mohali.

AND

In the matter of:

Residents of Shivalik City, Kharar through their authorized representative Sh. Navneet Singh S/o Sh. Balbir Singh.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited, The Mall Patiala.
2. M/s Shivalik Developers and Promoters.
3. M/s Shivalik Infrastructure and Developers Pvt. Ltd. SCO No. 510, Sector 70 Mohali.
4. Shivalik Vihar Structural Builders Sector-127, Kharar Landran Road Shivalik City Mohali.

.....Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: None

PSPCL: Sh. Naveen S. Bhardwaj, Advocate
Sh. Rupinderjit Singh, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Sukhjot Singh Sidhu, SE/Regulation

Shivalik Developer
& Promoters:

None

GMADA:

Balvir Singh Gill

PUDA

None

DTP:

None

Local

Vinay Mahajan, MC/Kharar, Engineer

Govt:

Punjab/ Municipal
Council Kharar

ORDER

1.0 This petition was filed by Sh. Navneet Singh s/o of Sh. Balbir Singh on behalf of the residents of Shivalik City, Sector 127, Mohali. The petitioner has submitted that the residential colony named as Shivalik City was developed by M/s. Shivalik Developers and Promoters. The Developer left the project site about two years back after selling out most of the houses. After completion of the construction of their houses, the petitioners approached PSPCL for electricity connections in their newly built houses. PSPCL, however, refused to register their applications citing instructions of Chief Engineer/Commercial, PSPCL banning release of connections in the area where the houses of the petitioners are situated. The petitioners were given to understand that release of new connections in the above said area was banned on account of the failure of developer to complete the LD system as per the Approved Plan/NOC. The petitioners managed to lay hands at memo no. 254-255 dated 6.3.2020 of CE/Commercial, PSPCL addressed

to CE/DS (South), PSPCL vide which, inter alia, CE/Commercial advised CE/South to stop releasing any new connections in the area referred to above. A copy of aforementioned memo was enclosed.

1.1 The petitioners further submitted that the ibid instructions of CE/Commercial, PSPCL did not seem to be in order being violative of Section 43 of Electricity Act, 2003 read with Regulation 5.1 of Supply Code, 2014 as the supplier i.e. PSPCL was bound to release connections to residents on application in terms of its licence. Apart from above, ban on release of new connections in a particular area was a critical matter affecting the public interest adversely. The licensee was not authorised to take unilateral and arbitrary decisions in such policy matters without prior approval of this Commission. Further, the dispute between PSPCL and developer of the Colony was not simple and easy and was likely to take years for resolution by courts/arbitrator. It was further submitted that pending the resolution of the dispute, the residents could not be deprived of essential service like electricity, especially for no fault on their part. The electricity connections were given by PSPCL to thousands of residents in Shivalik City, Kharar. The refusal of this facility to the petitioners residing in the same area was highly discriminatory and unjust.

1.2 The petitioners further submitted that they were finding it extremely difficult to live without electricity in the scorching hot weather and that the sufferings of affected residents could be well imagined. Keeping in view their pitiable condition and urgency of the matter, the petitioners solicited the intervention

of this Commission to rescue them from the virtual hell they found themselves in.

2.0 The petition was admitted vide order dated 10.08.2020 and M/s. Shivalik Developers and Promoters was impleaded as respondent. PSPCL was directed to submit its reply to the petition within 15 days along with the details of the officers who are responsible for refusing to release electricity connections to the residents of Shivalik City, Kharar.

3.0 PSPCL submitted their reply vide memo no. 5670 dated 31.08.2020, PSPCL submitted that the Shivalik City colony was developed by M/s Shivalik Developers & Promoters and its sister concerns and the project site was under DS Division Kharar. However, PSPCL did not confirm as to exactly when the developer had left the project.

3.1 PSPCL further submitted that the Shivalik City colony comprised of a group of 19 colonies to whom separate licenses were issued by the competent authority (GMADA) under Punjab Apartment and Property Regulation (PAPR) Act, 1995. In spite of the statutory provisions of PAPR Act, 1995 and the Supply Code-2014 for development of LD system, the developer and its sister concerns had taken final NOCs for only 7 colonies, out of which LD system was complete in only 3 colonies and no Bank Guarantee was available against the incomplete LD system. M/s Shivalik Developers & Promoters and its sister concerns neither developed a complete LD system for the Shivalik City colony nor were they forthcoming to complete it. This matter was reported to the licensing authority i.e. CA/GMADA vide memo no. 210-14 dated 20.02.2020 along with a copy to the

RERA. To initiate any legal action against the developer, it was important for PSPCL to ascertain its liability towards completing LD systems in all 19 colonies in the Shivalik City. Accordingly, various measures were approved vide memo no. 254-55 dated 06.03.2020, which included stopping of release of new connections and investigation by the office of CE/EA & Enforcement, PSPCL. Further, PSPCL decided to stop release of new connections in Shivalik City colony because the LD system by the developer at present was barely sufficient for supporting the already released approx. 1200 electricity connections and was totally inadequate for future power requirements of the colony. It was added that so far about 32 permanent connections and about 11 temporary connections had not been released.

3.2 PSPCL submitted that the provisions of Section 43 of the E.A., 2003 should not be read in isolation. In the case of licensed colonies under the provisions of PAPR Act, 1995, as per terms and conditions of the license issued by the authorized state agency such as GMADA/ PUDA etc. to the developer, it was the responsibility of the developer to provide the electrical network (LD system) in the colony. Further as per the provisions of Regulation 6.7 of Supply Code, 2014, the release of electricity connections in a licensed colony are governed by certain terms and conditions, which make it obligatory for the developer to obtain NOC from PSPCL for developing the LD system. Accordingly, the developer has to lay down the LD system in the colony as per approved NOC along with payment of prescribed charges towards electrical connectivity to the colony.

After complete LD system is laid and inspected by the Chief Electrical Inspector, PSPCL would take over the LD system and connect it to its distribution system. Later, it would be the responsibility of PSPCL to release connections to the residents of the colony. Therefore in case of licensed colonies, the provisions of Section 43 of the E.A., 2003 would apply to PSPCL only after the developer fulfilled his obligation under the terms and conditions of license granted under PAPR Act, 1995 and Supply Code-2014. Further, as per Regulation 5.1 of Supply Code, 2014, it is the duty of PSPCL to provide electricity on receipt of an application from the owner or occupier of any premises located within its area of supply within the time frame specified in the Supply Code. Further, Regulation 5.2 specifies that where an application pertains to an area that has not been electrified, the provisions of Regulations 6 & 8 for supply of electricity in such a case would be applicable only after electrification of that area as per the Investment Plan of the PSPCL approved by the Commission or Scheme approved by the authorized agency of the State/Central Government. As per the terms and conditions of the license granted by the authorized state agency such as GMADA/PUDA etc. under PAPRA-1995, it is the responsibility of the developer to provide the electrical LD system in the licensed colonies. Therefore, the provisions of Regulation 5.1 of Supply Code, 2014 would apply to PSPCL only after developer fulfilled his obligation under the terms of conditions of license granted to him by the state agency under PAPR Act, 1995.

3.3 PSPCL added that the developer had considered all charges including electrical infrastructure towards his project cost and had already recovered these while selling plots/flats to the residents. Therefore, wherever the developer was not developing electrical infrastructure, he was trying to shift his liability upon PSPCL and ultimately upon all the consumers of the state. PSPCL's decision to stop release of new connections in Shivalik City colony had emerged from the default on part of the developer to lay complete LD system because the present installed LD system by the developer was totally inadequate for future power requirement of the colony. This had led to overloading of presently installed electrical system including burning of the transformer.

4.0 PSPCL further filed an affidavit dated 03.09.2020 and submitted the details of the address of the petitioners and also the status of NOC given by PSPCL to 19 nos. colonies situated in Shivalik City:

S.No	Name of colony	Detail of final NOC/provisional NOC by PSPCL
1	Shivalik Enclave Ext-I	NOC issued vide memo dated 16.5.2003
2	Shivalik Enclave Ext-II	NOC issued vide memo dated 16.5.2003
3	Shivalik Enclave Ext-III	NOC issued vide memo dated 16.4.2003
4	Belverde Park	NOC issued vide memo dated 23.07.2010
5	Paradise Apartments	NOC issued vide memo dated 15.11.2013
6	Shivalik Vihar	NOC issued vide memo dated 17.08.2015
7	Shivalik Heights	NOC issued vide memo dated

		23.05.2014
8	Shivalik Enclave Ext-IV	Provisional NOC issued vide memo dated 01.06.2004
9	Shivalik Enclave Ext-V	Provisional NOC issued vide memo dated 27.05.2004
10	Shivalik Shopping Plaza	Provisional NOC issued vide memo dated 08.12.2004
11	Shivalik Estate	No NOC issued
12	Shivalik Estate - I	No NOC issued
13	Shivalik Estate - II	No NOC issued
14	Shivalik Enclave (Main)	No NOC issued
15	Shivalik Valley	No NOC issued
16	Paradise Apartments-II	No NOC issued
17	Shivalik Residency	No NOC issued
18	Royal Enclave	No NOC issued
19	Goa Real Estate	No NOC issued

5.0 During the hearing on 02.09.2020, Sh. Munish Kapila, Advocate appearing on behalf of M/s. Shivalik Developers and Promoters requested time to file reply and accordingly vide order dated 11.09.2020, he was directed to file reply within 2 weeks along with the number and date of the license of each colony and the extension of the licenses and the present status of the license, along with explanation as to why complete LD system was not constructed and why NOC was not taken from PSPCL as per the conditions of the license. During the hearing, the petitioners pleaded that the electricity connections were released to thousands of the residents of Shivalik City but the same was now being denied to the petitioners on the basis of CE/Commercial, PSPCL's letter dated 06.03.2020 thus violating Section 43 of the Act read with Regulation 5.1 of the Supply

Code, 2014. Further, PSPCL's submissions given vide memo no. 5670 dated 31.08.2020 were taken note of.

It was pointed out to PSPCL officers that as per PSPCL's own commercial circulars issued from time to time as well as provisions of the Conditions of Supply and the Supply Code, 2014, connectivity to a colony could be allowed only where LD system of the colony was complete or the developer had furnished the Bank Guarantee (BG) for the incomplete LD system and that the connections to the residents could be released only thereafter. However, as per PSPCL's own admission, connections were released in all these 19 colonies until the issue of instructions dated 06.03.2020 by the office of CE/Commercial, PSPCL. The officers of PSPCL submitted that the petitioners were located in 7 colonies where NOCs were issued and connectivity to these colonies was allowed. PSPCL was directed to file the status report on an affidavit. It was further pointed out in the order dated 11.09.2020 that contrary to the statement of the officers of PSPCL during the hearing, Annexure-II of the affidavit submitted by Addl.SE/Operation Division, PSPCL, Kharar on 03.09.2020 showed that 4 petitioners were located in Shivalik Enclave Extn No. 5 where provisional NOC was issued and one each in Shivalik Residency & Paradise-II where no NOC was issued. The provisional NOC of Shivalik Enclave Ext-V was issued by PSPCL in May, 2004 and PSPCL did not appear to have taken any action in the last 16 years to get the conditions of the license implemented. On the contrary, PSPCL continued to release connections to the residents of these colonies. Now

after a lapse of many years, PSPCL had realised that the developer had not completed the LD system. Thus, the Commission observed that the matter needed detailed scrutiny after affording an opportunity to all the parties to state their case which might take some time. Further, the Commission raised the following queries and PSPCL was directed to submit their reply to the queries within 2 weeks:

- “1. As per PSPCL’s reply, NOC’s have been issued to 7 number colonies out of total 19 number colonies in Shivalik City. Date of issue of license, date of issue of NoCs by PSPCL along with date of grant of connectivity to these 7 colonies may be submitted. The date of issue of license in the remaining 12 colonies should also be intimated.*
- 2. Before issue of CC No. 05 of 2011 dated 2.2.2011, connectivity to a colony was granted only after completion of LD system and connections were released thereafter. After issue of this CC, connectivity to partially completed LD system was allowed after obtaining BG equivalent to 150% of the cost of incomplete LD system. Out of 7 colonies of Shivalik City the LD system of only 3 colonies were completed by the developer. Reasons for connecting four number colonies with PSPCL’s mains without completion of LD system and/or without obtaining BG may be explained. What action has been taken against delinquent officers/officials. What is the financial burden of this lapse.*
- 3. Number of permanent connections released in these 7 colonies (colony-wise). When last connection was released in each colony? Were Service Connection Charges/other charges recovered from all the consumers? Number of temporary connections running in these colonies. What is the number of pending connections in each colony?*

4. *Status of LD system in 12 other colonies. Has PSPCL laid down any LT line or service line to release connections in these colonies? How have these 12 colonies been connected to PSPCL's supply mains? Whether PSPCL has extended/connected the LD system of these 12 colonies with PSPCL's mains or the developer has connected it in an unauthorized manner.*
5. *The number of permanent and temporary connections released in 12 colonies (colony-wise) where NoCs have not been issued by PSPCL. The amount of Service Connection Charges recovered, if any, from consumers in these 12 colonies and the amount spent on laying the LD system of these colonies.*
6. *As per PSPCL's directions to CE/Enforcement dated 6.3.2020, the investigation report was to be submitted by 31.3.2020. A copy of the investigation report has not supplied to the Commission despite specific directions on the last date of hearing i.e. 8th July, 2020. The complete investigation report needs to be supplied to the Commission along with action taken report.*
7. *One of the condition of license is that the developer shall obtain NOC and get the LD system approved from PSPCL. What action PSPCL has taken to get the same implemented? Before allowing complete/partial completion to the developer, PUDA/GMADA generally obtain NoCs from various departments. Was an NoC obtained from PSPCL? If not, has PSPCL ever raised this issue with the concerned State government departments. If yes, did PSPCL not get bank guarantees at that time?*
8. *The licensing authority (PUDA, GMADA etc) collect BG from the developer before issue of license. Is liability against electrification also covered in it? If not, has PSPCL taken up this matter with the concerned department?*
9. *Has PSPCL intimated the total liability to GMADA for the 7 colonies where NOCs have been issued and the liability*

for remaining 12 colonies where no NOC has been issued by PSPCL? What action has been taken by GMADA/RERA? Submit a complete report.”

6.0 PSPCL submitted its reply with respect to above mentioned queries vide memo no. 5044 dated 26.10.2020 as brought out in the succeeding paras.

6.1 PSPCL submitted the date of issue of licence and the date of issue of NOCs along with grant of connectivity to the colonies.

6.2 It was added that out of 7 colonies, the LD system of 3 colonies was completed by the developer. Regarding the balance 4 colonies (i.e. Shivalik Enclave Extn.-1, Shivalik Enclave Extn.-2, Shivalik Enclave Extn.-3 and Berverde Park), the LD system was not completed by the developer. Due to non-installation of complete LD system in these colonies, financial burden of approx. 70 lacs was worked out. The matter regarding action to be taken against delinquent officers/officials was under investigation by the Enforcement wing of PSPCL.

6.3 The details of the number of connections released and service connection charges collected were also submitted by PSPCL as under:

Sr. No	Name of colony	No. of permanent connection	No. of temporary connections	Date of last connection	No. of pending connections	Total service connection charges received
1	Shivalik Enclave Extn.-1	57	2	26.06.2019	All the connections applied before 06.03.2020 stands released. After	188401
2	Shivalik Enclave Extn.-2	34	0	15.05.2019		192770
3	Shivalik Enclave	67	1	09.09.2014		132880

	Extn.-3				06.03.2020, no new application was registered by field office.	
4	Belverde Park	80	0	09.02.2017		463739
5	Paradise Apartments	92	0	16.12.2019		436581
6	Shivalik Vihar	69	0	20.02.2020		268650
7	Shivalik Heights	75	0	30.09.2019		406153

6.4 In 12 other colonies, only LT line was installed at some places by the builder himself and these LT lines were connected with the LD system of 7 no. colonies for which PSPCL had issued NOCs to the builder. PSPCL had not installed any LD system in these 12 no. colonies except for one no. 100kVA transformer. PSPCL had also installed service cables at the time of release of connections.

6.5 The details regarding remaining 12 no. colonies were given as under:

Sr. No.	Name of colony	No. of permanent connections	No. of temporary connections	Total service connection charges received (Rs.)	Amount spent on laying LD system (Rs.)
1	Shivalik Enclave Extn.-4	39	1	274785	NIL
2	Shivalik Enclave Extn.-5	207	10	1122549	Rs. 2 lacs (approx.)
3	Shivalik Shopping Plaza	30	2	156652	NIL
4	Shivalik Estate	47	0	417426	NIL
5	Shivalik Estate -1	47	0	260252	NIL
6	Shivalik Estate -2	41	1	293630	NIL
7	Shivalik Enclave	47	1	267465	NIL

	Main				
8	Shivalik Valley	43	0	214791	NIL
9	Paradise Apartments-2	63	0	319475	NIL
10	Shivalik Residency	49	0	260116	NIL
11	Royal Enclave	34	0	187663	NIL
12	Goa Real Estate	9	0	84968	NIL

6.6 PSPCL submitted a copy of interim investigation report of O/o CE/Enforcement and submitted that the final report along with action taken report would be submitted after completion of the inquiry.

6.7 Further, PUDA/GMADA had not obtained any NOC from PSPCL for providing complete/partial completion to the developer. At the time of takeover of Shivalik City by the Municipal Committee/Council (MC) Kharar, their office was informed about installation of incomplete LD system by the developer vide AE/DS City Kharar, PSPCL memos dated 21.01.2016, 01.08.2018 and 21.08.2018 and ASE/DS, Kharar, PSPCL memo dated 04.02.2019. Further, the GMADA along with the RERA, were informed regarding incomplete LD system in Shivalik City, Kharar vide memo dated 20.02.2020. The office of SSP, Mohali was also informed about incomplete LD system installation by builder and his office was requested to trace the builder in view of the hardships faced by the dwellers of the colony. Further, no BG was provided to PSPCL at any time by the developer/PUDA/GMADA etc.

6.8 PSPCL further submitted that as per the instructions issued vide Department of Housing and Urban Development, Govt of

Punjab memo no. 17/17/2001-5Hg2/PF/2098 dated 18.06.2013, 25% BG of cost of internal development works is deposited by the promoters with licensing authority as per provisions of PAPRA-1995. The developers had brought to the notice of Govt. of Punjab that PSPCL again asks them to deposit 150% BG of the estimated cost of LD system in the colony. The Govt. agreed to the suggestion of promoters in this regard and decided that w.e.f. 18.06.2013, no BG against estimated cost of LD system would be taken by the licensing authority.

6.9 PSPCL had conveyed to the MC Kharar regarding liability of approx. 70 Lacs for incomplete LD system in 7 No. colonies. For the rest of 12 No. colonies, letters were written to the Department of Local Bodies, MC Kharar and GMADA to provide copies of approved layout plans so that the load estimation could be done for working out the total liability of the developer towards development of LD system. No reply was received from these authorities so far.

7.0 Subsequent to the hearing on 28.10.2020, the Commission made observations, issued directions and asked PSPCL to show cause vide order dated 02.11.2020 as under:

“.....PSPCL’s reply dated 26.10.2020 reveals that out of 19 colonies in Shivalik City, final NOCs have been issued by PSPCL to only seven colonies. The developer has completed the LD system of only three colonies i.e Paradise Apartments, Shivalik Vihar & Shivalik Heights and these colonies were connected to PSPCL’s distribution system in March, 2007, June 2011 and March 2014 respectively. However, for the remaining four colonies, the connectivity to three colonies i.e Shivalik Enclave Extn-I, Extension-II, Extension-III was granted by PSPCL in June, 2004 and to

the fourth colony i.e Belverde Park in December, 2005 without getting the LD system completed from the developer. PSPCL released connections to the residents of these colonies after recovery of Service Connection Charges without making any effort to get the LD system completed by the developer. PSPCL has recovered over Rs. 20 lac from the consumers as Service Connection Charges.

PSPCL failed to produce any evidence to show that the matter for completion of the LD system was taken up either with the developer or with the licensing authority. As per the interim enquiry report, the first reference was made by SDO/city Kharar vide memo no. 648 dated 27.04.2018 i.e about 14 years after allowing connectivity. PSPCL continued to release connections to the applicants right up to March, 2020 till it was arbitrarily stopped vide CE/Commercial letter dated 06.03.2020.

In the reply dated 26.10.2020, PSPCL has not indicated any expenditure incurred by the utility on the erection of LD system or installation of any DTs in these seven colonies. However, the enquiry report reveals that three distribution transformers issued from PSPCL's store have been installed in the four colonies with incomplete LD system.

In the remaining 12 colonies in Shivalik City, according to PSPCL, no final NOC has been issued nor has any connectivity been allowed by PSPCL. In spite of that PSPCL has released 656 permanent connections, starting from 2015, by illegally connecting the LT lines erected by the developer in some of these colonies with the LD system of the original seven colonies. As per the enquiry report, most of these connections have been issued in the last five years. PSPCL also recovered over Rs.38 lac from the residents of these 12 colonies as Service Connection Charges. As per the reply given by PSPCL, the licensee is not even aware of any licence having been issued by the licensing authority in four out of these 12 colonies. However, connections have been released in these colonies. It has also been indicated in

the enquiry report that PSPCL has released two MS connections for water works in Shivalik Enclave Extension-V & Shivalik Valley Colonies and one under NRS category in Paradise Apartments-II colony. PSPCL failed to produce any Instructions/Rules/ Regulations under which such a large number of connections have been released in these colonies without getting the conditions of licence or provisions of Regulations implemented from the developer PSPCL has stated in its reply that no LD system has been laid by it, except one 100 kVA transformer in these 12 colonies. However, the enquiry report reveals that five 200 kVA and one 100 kVA distribution transformers issued from PSPCL's store have been installed in these colonies. During hearing, the PSPCL's officer stated that these transformers have been installed to replace the damaged transformers of the developer. The large scale release of connections to residents and for common services such as water works, street light along with installation of distribution transformers to replace DTs installed by the developer without taking over the LD system of these colonies shows that the rules/regulations have been violated with impunity by the officials/officers of the PSPCL for the last more than 14 years.

After 14 years, PSPCL has realized that some amount is due to be recovered from the developer and therefore the release of connections to the residents has been stopped vide Chief Engineer/Commercial, PSPCL letter dated 06.03.2020. PSPCL failed to appreciate that recovery, if any, is due from the developer and not from the individual residents. The residents cannot be penalized for the fault of PSPCL and the developer, specially when over 1100 connections have already been released by PSPCL in these 19 colonies. The officials/officers of PSPCL have blatantly violated the Rules/Supply Code Regulations and allowed the developer to skip his liability of erecting the LD system in these colonies as per the conditions of his licence. PSPCL failed miserably to protect its own financial interest by not taking up the

matter with the licensing authority at the appropriate time. The residents/consumers of these 19 colonies in Shivalik City, Sector-127, Kharar cannot be made to suffer because of the culpable negligence of the PSPCL's official/officers. Electricity is an essential service and applicants cannot be denied the electricity connections merely because the officials/officers of the distribution licensee failed to get the conditions of licence implemented by the developer.

As per condition 8.5 of the 'Conditions of Supply', which came in to force w.e.f 01.04.2010 and Regulation 6.7 of the Supply Code, 2014, no Service Connection Charges are recoverable from the consumers/applicants of the residential colonies developed under the bye-laws/rules of the State government since the developer is supposed to lay the LD system and also provide service cable upto the metering point.

However, the developer in this case, according to PSPCL, has not laid down the complete LD system in these colonies and PSPCL has taken up the issue now with the developer and the licensing authority. Therefore, PSPCL is allowed to recover the Service Connection Charges treating the applicants of these colonies as ordinary consumers/applicants for new connections subject to the outcome of this petition.

Keeping in view the facts and circumstances of this particular case, the Commission is of the view that the directions of Chief Engineer/Commercial issued vide letter dated 06.03.2020 to stop release of connections in these colonies is arbitrary, discriminatory and against the principle of natural justice. PSPCL has not ensured that the developer actually laid out the LD system as required under the rules/regulations. However the residents cannot be denied essential electricity service and therefore till such time as the matter is resolved, PSPCL is obligated to provide supply to the residents.

PSPCL is directed to release electricity connections to the residents of these 19 colonies of Shivalik City after recovery of Service Connection Charges/other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in this petition. Any expenditure incurred by PSPCL on release of connections may be recovered from the developer or the licensing authority or the delinquent officials/officers as per law. PSPCL is directed to submit the final enquiry report along with action taken report within 3 weeks of this Order. It is reiterated that the above interim directions to PSPCL have been issued keeping in view the peculiar facts and circumstances of the present case and are not necessarily applicable to other cases.

PSPCL may show cause by 25.11.2020 as to why action under section 142 of the Act should not be taken against the distribution licensee for continuing a blatant violation of the provisions of the Supply Code.....”

Further, vide order dated 02.11.2020, the counsel appearing on behalf of the developer was also directed to file a complete reply regarding the status of compliance of the conditions of the licence in the 19 colonies of Shivalik city particularly with respect to development of the LD system in these colonies as per the condition of the licence and the status of obtaining final NOC from PSPCL.

- 8.0 PSPCL filed its reply vide memo no. 5283 dated 25.11.2020 and submitted that in compliance to Commission's order dated 02.11.2020, directions for release of connections were issued vide memo no. 861 dated 10.11.2020. Further, the details of connections released in Shivalik City colony after interim order of the Commission were being sought from the field office and

CE/Enforcement was being asked to submit the final enquiry report. As such, PSPCL needed some more time to prepare reply to Show Cause and requested for a period of minimum one and a half month for filling their reply and to extend the next date of hearing to middle of January, 2021.

- 9.0 During the hearing on 02.12.2020, PSPCL officers confirmed that 15 persons had applied for electricity connection and the connections were released to 12 persons in the 19 colonies of Shivalik City and that the remaining connections would also be released immediately. PSPCL submitted that the inquiry report was at its final stage and would be submitted shortly. Vide order dated 08.12.2020, PSPCL was directed to submit the final inquiry report along with action taken report as well as the reply to the show cause notice by 11.12.2020. Further, the counsel appearing for the developer sought time to inspect the file to enable him to file a detailed reply in the petition. He was allowed to inspect the file and a last opportunity was given to file the detailed reply by 11.12.2020.
- 10.0 PSPCL filed its reply vide memo no. 5368 dated 11.12.2020 and submitted the final enquiry report along with action taken report. PSPCL further submitted that the data submitted vide memo no. 5044 dated 26.10.2020 regarding date of issue of NOC along with date of grant of connectivity to 7 colonies needed amendment and accordingly furnished the amended data.
- 11.0 Vide memo no. 943 dated 11.12.2020, PSPCL referred to the Commission's order dated 02.11.2020 regarding show cause and submitted that initially the matter regarding Shivalik City, Kharar came to the knowledge of the senior management of

PSPCL in 07/2019. As per initial information, LD system costing approx. 61 Lacs was pending in 7 colonies for which developer was not responding. During scrutiny of the case, it was gathered that Shivalik City comprised of group of 19 colonies, whereas NOCs to only 7 colonies was issued. Further, it was gathered that the LD system presently installed by the developer was inadequate for future power requirement of this colony.

- 11.1 In view of the statutory provisions of the licenses issued by GMADA to these colonies, matter was referred to CA/GMADA vide memo no. 210 dated 20.02.2020, with copy to RERA to impress upon the developer to complete the installed LD system along with obtaining remaining NOCs from PSPCL for installation of the LD system.
- 11.2 PSPCL further submitted that since it was important to ascertain the liability of the developer for all 19 colonies, field office was instructed vide memo no. 254 dated 06.03.2020 to estimate the cost of LD System/Connectivity charges towards 19 colonies. Instructions were passed that no new connection should be released in these 19 colonies till overall liability was recovered from the developer. Further, to fix the responsibility of the delinquent officials, an inquiry was ordered through Enforcement wing of PSPCL.
- 11.3 Later, when the Commission passed an interim order dated 02.11.2020 in this Petition to release connections in these colonies, immediate compliance was made vide memo no. 861 dated 10.11.2020 and field offices had started releasing new connections in Shivalik City, Kharar. Further, the Commission

had issued a show cause notice to PSPCL for action under Section 142 of the Electricity Act.

- 11.4 PSPCL submitted that the instant case was a human failure and not a system failure. PSPCL management always promoted that the rules and regulations should be strictly adhered to and strict action was taken whenever any case of dereliction of duty was found.
- 11.5 In the instant case, the concerned field officers should have done due diligence while releasing connections in 19 colonies of Shivalik City, Kharar. As per the terms and conditions of the NOCs issued to 7 No. colonies, LD system should have been got completed from the developer before release of connections in these colonies. The connectivity to remaining 12 colonies should not have been released without issue of NOCs and subsequent laying down of LD system. As the developer was not forthcoming for completion of LD system in 7 colonies and for obtaining NOCs in 12 remaining colonies, the matter should have been vigorously taken up with licensing authority for enforcing the terms & conditions of licenses.
- 11.6 When this case came to the notice of PSPCL management in 07/2019, a serious notice of the matter was taken and instructions were passed vide memo no. 254 dated 06.03.2020 for getting this matter investigated from the Enforcement wing. The final inquiry report in this regard stood forwarded to the Commission. As per this report, action against 17 delinquent officers/ officials was initiated.
- 11.7 Regarding the decision taken in March, 2020 to stop release of new connections in Shivalik City colonies, PSPCL submitted that it was never the intention of PSPCL to harass the new

consumers. This action was primarily taken to protect the supply condition of existing consumers as the available LD System in Shivalik City colony was inadequate. Recently when the Commission passed an order for release of new connections, same was immediately complied with by PSPCL in the right earnest and wherever required, LD system would be upgraded by PSPCL.

11.8 PSPCL further submitted regarding recovering the cost from the developer that the field officers had been instructed to work out the cost of LD system along with connectivity charges to be recovered from the developer based upon the approved layout plans of these projects and this cost would be intimated to the licensing authority. Further, it had been instructed that a recovery suit should be filed against the developer.

11.9 PSPCL added that to tackle the release of connections in abandoned colonies, a proposal was submitted by PSPCL vide memo no. 650 dated 28.08.2020. It was proposed that the estimated cost of LD system/connectivity charges should be equally divided among the plot holders and an annual rise of 12% should be considered while working out this amount. Based upon this proposal, Commission had desired the data regarding all such colonies in the state of Punjab. This data had been gathered and same was being submitted to Commission shortly after due checking.

11.10 PSPCL submitted that the cost estimation of LD system in abandoned colonies could take a lot of time as approved layout plans of the colonies were required to be obtained from the licensing authorities. Therefore, a revised proposal was being prepared for expeditiously releasing pending connections in

abandoned colonies. This proposal was being finalized and would be submitted to the Commission shortly.

11.11 PSPCL further submitted that an instruction had already been passed to Enforcement wing of PSPCL to check all colonies throughout state of Punjab to whom NOCs were issued, to find out any lapses in the implementation of prevailing instructions. Moreover, a distribution return was also being planned for the regular monitoring of PAPR Act, 1995 approved abandoned colonies throughout the State of Punjab.

11.12 PSPCL assured that they have zero tolerance towards non-implementation of relevant rules & regulations including the Supply Code and all possible steps were being taken to enforce the same in the field offices. PSPCL requested that Show Cause Notice issued vide Interim order dated 02.11.2020 may be dropped.

12.0 During the hearing on 16.12.2020, PSPCL officers submitted that as per the orders of the Commission, the final enquiry report along with reply to show cause notice had already been submitted. However, it was pointed out to PSPCL that the reply to show cause notice was incomplete. Accordingly vide order dated 18.12.2020, PSPCL was directed to submit the following documents/information by 05.01.2021:

- i. The relevant instructions regarding competency of the officers to grant connectivity to the colonies.
- ii. Copies of the NOCs issued to the 7 colonies of Shivalik City by PSPCL.
- iii. Copies of the licence issued by the licensing authority to various colonies of Shivalik City.

- iv. Instructions, if any, under which Service Connection Charges have been recovered from the residents of the colonies after the “Condition of Supply” came into force w.e.f. 01.04.2010.
- v. In the information submitted to the Commission vide CE/ARR&TR memo no. 5044 dated 26.10.2020, the service connection charges in some cases were shown as zero. The same may be explained.
- vi. Information regarding other colonies in the State where the developers had abandoned the project without fulfilling the condition of licence as sought by the Commission vide letter dated 11.09.2020.

Further, the Advocate appearing on behalf of M/s Shivalik Developers and Promoters requested more time to file its reply. Since additional time to file reply was given by the Commission a number of times, the conduct of the developer amounted to violation of the orders of the Commission and vide order dated 18.12.2020, the developer was directed to show cause within two weeks why action should not be taken by the Commission against him under Section 142 of the electricity Act, 2003 for violating the orders of the Commission.

13.0 During the hearing on 18.01.2021, it was informed that the counsel representing M/s Shivalik Developers and Promoters was present and had left after intimating that he had developed some personal health problem. Accordingly, the hearing was adjourned to the next date i.e. 10.02.2021.

14.0 Vide memo no. 5245 dated 08.02.2021, PSPCL submitted information with reference to the Commission’s order dated 18.12.2020 as given in succeeding paras.

14.1 PSPCL intimated the relevant instructions regarding competency of the officers to grant connectivity to the colonies and that the following major activities were performed for approval of NOC and grant of connectivity to a licensed colony as under:

- i) The process of grant of NOC starts when developer submits electrification proposal to office of CE/Commercial. Earlier this process was offline and w.e.f. 15.06.2013, this process had been made online. After receipt of technical proposal from the office of SE/DS, NOC is granted by office of CE/Commercial whose copies are sent to the developer, licensing authority and concerned SE/DS.
- ii) Estimated connectivity charges as worked out in the technical proposal submitted by SE/DS are incorporated in the NOC. Actual connectivity charges to be deposited by the developer are worked out as per final estimate prepared at the time of actual release of connectivity to the colony.
- iii) After issue of NOC, execution of NOC is done at the level of SDO/DS as per instructions issued vide their Commercial Circular (CC) No. 50/2007 and CC No. 06/2012.

14.2 PSPCL submitted the copies of the NOCs issued to the 7 colonies of Shivalik City.

14.3 PSPCL submitted that the copies of the licence issued by the licensing authority to various colonies of Shivalik City. The same were submitted for 15 colonies.

14.4 Regarding Service connection charges (SCC), PSPCL submitted that the following instructions were issued from time to time:

a) 39/2003 dated 13.06.2003:

For release of individual connection, allottees have to pay SCC because PSEB has to incur expenditure in generation/ transmission/ distribution & will also have to provide service cable from the LD system laid by the developer.

b) 50/2007 dated 17.09.2007:

For release of individual connection, individual consumers shall pay Service Connection charges.

c) Clause 8.5 of Conditions of Supply:

The service cable for providing individual connections will be provided at the cost of the developer and will be connected to the LD system by the Board at the time of release of individual connections.

d) Regulation 6.7.1 (f) of Supply Code 2014:

The developer shall be responsible to lay service cables and PSPCL shall not recover any Service Connection Charges from individual consumers.

It was further submitted that whether SCC were to be charged or not was to be decided under which conditions or rules NOC for a particular colony was issued. For those NOCs which were issued before 01.04.2010 i.e. before issue of Conditions of Supply, SCC were to be deposited by consumers even if connections were released after 01.04.2010. However for those NOCs which were issued after 01.04.2010, as per clause 8.5 of Conditions of Supply, the service cable for releasing individual connections would be provided at the cost of developer and SCC are not payable by consumers.

Regarding those colonies of Shivalik City where NOC were issued after 01.04.2010 (i.e. Berverde Park, Paradise Apartments, Shivalik Vihar, Shivalik Heights), SCC were charged by field offices from those consumers where service cable was not provided by consumer/owner/developer.

14.5 It was further submitted that the Service Connection charges were zero for some cases where the owner/developer provided the service cable. In some cases, record for deposited service connection charges was not available in the field office and for those cases also, SCC were mentioned as zero.

15.0 During the hearing on 10.02.2021, the counsel for M/s. Shivalik Developers and Promoters submitted that he represented only 6 out of 19 colonies for which the notice was issued impleading the Shivalik Developers & Promoters as the respondent. It was further submitted that the other 5 colonies pertained to Shivalik Infrastructure & Developers Private Limited but he was not aware of the developers of the remaining 8 colonies. Upon a specific query by the Commission, the counsel submitted that he would have to check the relationship between Shivalik Developers & Promoters and Shivalik Infrastructure & Developers Private Limited, if any, and/or commonality of Directors between them.

However, the counsel failed to reply to the query as to why his client had not completed the LD system of remaining colonies for which NOCs were issued by PSPCL and sought time to submit the reply. While expressing displeasure at the ill-preparedness of the counsel, the Commission vide order dated 16.02.2021, directed him to submit within a week, colony-wise details of developers, explicitly pointing out commonality of

Directors wherever applicable and the reasons for not completing the LD system of the colonies for which NOC was issued by PSPCL.

Further, the officers representing PSPCL failed to give a convincing reply to the query of the Commission regarding the details of the developers of Shivalik City to whom licences and/or NOCs were issued. PSPCL officers merely submitted that out of 7 colonies to which NOCs were issued, LD system had been completed by the Developer only in 3 colonies viz., Shivalik Vihar, Shivalik Heights & Paradise Apartments.

Vide order dated 16.02.2021, PSPCL was directed to submit within two weeks, complete details, along with address, phone no. & email of every developer for these 19 colonies, the liability of each such developer on account of non-completion of LD system and the names of the developers to whom temporary connections were issued, so that they may be impleaded as respondents and notices be issued to them.

16.0 PSPCL filed its reply vide memo no. 5975 dated 22.04.2021 and submitted information with reference to the Commission's order dated 16.02.2021 which showed that the liability of the developers on account of non-completion of LD system based on estimate framed for electrification of the colonies worked out to be Rs. 662.5 lacs.

17.0 During the hearing on 28.04.2021, none of the petitioners or any other representative on their behalf or the Advocate on behalf of M/s Shivalik Developers and Promoters was present. Keeping in view the prevailing COVID-19 pandemic, it was directed vide order dated 03.05.2021 to issue notice to the

petitioner as well as the developer for appearance on the next date of hearing in the interest of justice.

18.0 In the hearing on 26.05.2021, the Commission observed that the presence of Chief Administrator, Greater Mohali Area Development Authority; Planning Officer, Town & Country Planning, Punjab, and Secretary, Department of Housing and Urban Development, Govt. of Punjab was necessary for the adjudication of the matter. Accordingly vide order dated 02.06.2021, it was directed to issue notice to the above said authorities for their presence on the next date of hearing. Further, the developer was granted the last opportunity to submit its reply by 03.06.2021, failing which appropriate legal action including imposing costs would be taken. The concerned Director, PSPCL was also directed to appear on the next date of hearing.

19.0 M/s. Shivalik Developers and Promoters filed their reply dated 14.06.2021 and submitted copies of licenses for 6 nos. colonies issued to them. Out of 19 colonies, licences for only 6 colonies namely Shivalik Enclave, Shivalik Enclave Ext-I, Shivalik Enclave Extn-II, Shivalik Enclave Extn-III, Shivalik Enclave Extn-IV and Shivalik Enclave Extn-V had been issued to M/s Shivalik Promoters & Developers. It was further submitted that these colonies were taken over by MC Kharar vide agreement dated 3.2.2016 and once the colony is taken over by the MC Kharar, no licence renewal was required. Even before taking over of the colony by MC Kharar, PSPCL never raised any objection in respect of any electricity works being incomplete in any form whatsoever. The Developer had constructed/laid LD

systems as per the requirement. Now after handing over the project to the MC Kharar, the Developer had no connection with the said project which had been under the control of the MC Kharar since 2016. Now, deliberately, the Developer had been dragged into the present controversy. Therefore, now PSPCL was estopped from alleging that the LD works had not been completed by the developer.

19.1 It was further submitted that the licences for development of 5 colonies namely Shivalik Vihar, Shivalik Residency, Shivalik Heights, Royal Enclave and Goa Real Estate were never issued to them. Similarly Belverde Park, Shivalik Shopping Plaza, Shivalik Valley, Shivalik Estate, Shivalik Estate-1 and Shivalik Estate II had been developed by Shivalik Infrastructures & Developers Pvt. Ltd. It was further submitted that Shivalik Infrastructure & Developers was a private limited company and the said company was neither a party nor any notice was issued by the Commission to Shivalik Infrastructure & Developers Pvt. Ltd. and that Sh. Ghansham Sharma was a director in that company.

19.2 The developer prayed that in view of the above position, they had no concern with the present dispute and the present petition warranted dismissal.

20.0 In the hearing on 16.06.2021, the learned counsel for M/s. Shivalik Developers & Promoters submitted that he represented only six colonies which had since been taken over by the MC Kharar after installation of the LD system. PSPCL officer submitted that PSPCL had written to the MC Kharar not to take over the colonies of Shivalik City since their LD system

was not complete, which nevertheless were still taken over by the MC Kharar. Vide order dated 29.06.2021, PSPCL was directed to place on record the correspondence undertaken with the MC Kharar in this regard. The learned counsel for the developer was directed to confirm through an affidavit within 2 weeks that the LD system in six colonies represented by him stood completed by the developer. GMADA was directed to submit the information as to whether the developers had taken the NOCs for 19 colonies of Shivalik City and if not, the action taken by GMADA as per PAPR Act, 1995 and respective conditions of license against such defaulting licensees/developers. GMADA was further directed to submit the details of all the Bank Guarantees or other securities available with them against these colonies of Shivalik City and to initiate the process of encashing them for violation of their licensing conditions and handing over the amount to PSPCL for development of LD system left incomplete by the defaulting developers. PSPCL was also directed to intimate the amount required for completion of LD system in these colonies. Further, in respect of the notices given for the appearance in the hearing, only the Chief Engineer, GMADA was present in the hearing. It was also directed to issue notices to the Chief Planning officer, Town & Country Planning, Punjab; Secretary, Department of Housing and Urban Development, Govt. of Punjab and Director, Department of Local Govt., Punjab for presence of some senior officers on the next date of hearing failing which appropriate legal action including imposition of cost could be taken.

21.0 PSPCL filed its reply vide memo no. 6651 dated 09.07.2021 and submitted the correspondence undertaken with MC Kharar vide their letter no. 1265 dated 01.08.2018, no.1338 dated 21.08.2018 and no. 700/701 dated 04.02.2019. PSPCL further submitted that an amount of approx. Rs. 662.5 Lac would be required to complete the LD system in 16 no. colonies, where installed LD system was either incomplete or not installed by developer. Further, PSPCL had written to MC Kharar vide memo no. 403-05 dated 12.01.2021 to make efforts to get deposited the amount of approx. Rs. 662.5 Lac to PSPCL in order to complete the electrification of the colonies at Shivalik City, Kharar.

22.0 Vide memo no. 1787 dated 13.07.2021, GMADA submitted the list of the licences issued by it since 01.01.2001. However, the aforementioned list and the list of the colonies against which Security was available with GMADA, did not include the colonies of the Shivalik City, Kharar. GMADA further submitted that as per the conditions stated in the completion policy dated 02.09.2014, copy of mandatory clearances obtained from PSPCL and clearance certificate issued by the Chief Electrical Inspector, Punjab w.r.t. commissioning of electrical transformers and HT lines and the report of the concerned Xen/Electrical (Development Authority)-Member (Inspection Committee formed under completion policy dated 02.09.2014) was mandatory before issuance of Partial/Completion Certificates. It was also mentioned that alongwith other mandatory documents, the above mentioned two documents were also procured before issuance of Partial/Completion Certificate to the promoters.

23.0 Subsequent to the next hearing held on 14.07.2021, the Commission made observations and issued directions as under vide order dated 19.07.2021:

“The Commission directed, vide order dated 29.06.2021, the developer, M/s Shivalik Developers and Promoters to confirm on affidavit that the LD system in 6 colonies stood completed. The information sought by the Commission has not been provided by the developer. During hearing, neither the counsel nor any representative has appeared on behalf of the developer. Despite giving ample opportunity, the developer/ their counsel failed to appear before the Commission and submit its reply, which amounts to clear violation of the directions of the Commission. Cost of Rs. 1,00,000 is imposed on the developer, M/s Shivalik Developers & Promoters for the non-compliance of the directions of the Commission.

Notice was also issued to the Secretary, Department of Housing and Urban Development Govt. of Punjab, however nobody has appeared on behalf of the said Department. The Secretary, Department of Housing and Urban Development to show cause why action should not be taken under Section 142 of the Electricity Act 2003 for violation of the directions of the Commission.

PSPCL has submitted the information in response to the Order dated 29.06.2021, vide memo No. 6651 dated 09.07.2021. The information submitted by GMADA vide memo No. ਗਮਾਡਾ/ਡੀਟੀਪੀ/ਅ-2/ਯ 2021/ 1787 dated 13.07.2021 is incomplete. The details of the bank guarantees/other securities available with GMADA against the colonies of Shivalik City and the action for encashing them for violation of the licensing conditions and handing over the amount to PSPCL for development of LD system left incomplete by the defaulting developers, have not been provided by GMADA. The same be provided immediately with a copy to PSPCL.

PSPCL shall submit its reply to the same well before the next date of hearing.

During the hearing, the representative appearing on behalf of Municipal Council Kharar stated that they have taken over only the civil works of the colonies and no letter had been received from PSPCL before taking over the colonies. The Director Local Govt. appearing on behalf of Department of Local Govt. Punjab submitted that standing instructions will be issued to all the constituent authorities covering the relevant aspects for taking over the colonies so that it is ensured in future that even the required LD system is completed before takeover of the colony. The Commission notes that violation of the Terms and Conditions of the license by the developers attracts action by PUDA/GMADA and other authorities and accordingly.

PUDA/GMADA/ other licensing authorities are directed to submit the details of action taken against the developers in their areas of jurisdiction for violation of the terms and conditions of the licenses issued to the developers. Municipal Council Kharar is directed to submit the instructions/policy, if any, which provides that the colonies are taken over by the Municipal Council excluding the electric works....”

- 24.0 Since no one appeared on behalf M/s. Shivalik Developers & Promoters in the hearing on 20.07.2021, vide order dated 27.07.2021, the Commission directed M/s. Shivalik Developers & Promoters to deposit the cost amounting to Rs. 1 lac within 15 days failing which an additional penalty for continuing failure would be imposed. Further, it was observed that besides M/s. Shivalik Developers & Promoters, M/s. Shivalik Infrastructure and Developer Pvt. Ltd. and M/s. Shivalik Vihar Structural Builder were the other developers of the colonies in the Shivalik City. Thus vide order dated 27.07.2021, these developers were also impleaded as a respondent in the petition.

The Director, Local Bodies, Govt. of Punjab submitted that necessary instructions for not taking over a colony without ensuring a completed LD system had been issued and copy of the same would be filed before the Commission. Vide order dated 27.07.2021, it was directed that the same be filed and that the said Department would also file the details of the undertakings/bank guarantees with it and given by the developers, on affidavit within a week. GMADA was also directed to immediately submit the details of the bank guarantees/other securities against the colonies of Shivalik City and the action for encashing them for violation of the licensing conditions and handing over the amount to PSPCL for development of LD system left incomplete by the defaulting developers.

The Commission enquired from Director/Distribution, PSPCL as to how the connections were given in the colonies without completion of LD system and without any BG from the developer. Director/Distribution, PSPCL admitted that some lapses had occurred in the past and that action was being taken against officials/officers after conducting an enquiry. PSPCL was directed to submit, within a week, the final action taken report against the staff/officers commensurate with the lapse for act of omission and Commission for violating the rules and regulations in providing the electricity connections to the builders/developers and residents of Shivalik City.

- 25.0 The Estate Officer, MC Kharar submitted an affidavit dated 28.07.2021 that Punjab Urban Development Authority (PUDA) had granted the Licences in year 2001 to 6 colonies (Shivalik

Enclave, Shivalik Enclave Extension-1, Shivalik Enclave Extension-2, Shivalik Enclave Extension-3, Shivalik Enclave Extension-4 & Shivalik Enclave Extension-5) promoted by Amardeep Singh Heera son of Sadhu Singh, Managing Director, M/s Shivalik Developers and Promoters, SCO No 510, Sector 70, Mohali and to another 6 colonies (Shivalik Shopping Plaza, Shivalik Valley, Shivalik Estate Phase-II, Belward Park, Shivalik Estate & Shivalik Estate Extension-1) promoted by the aforementioned person in year 2005-06. As per the laid procedure, licence to the develop the colony was previously granted by competent authority which in all the above cases was Senior Town Planner, SAS Nagar after inspection of the project regarding availability of all the basic amenities including electricity. Thereafter, in April 2013, the competent authority was changed to the concerned Regional Deputy Director in the case of Municipal Councils and Commissioners in the case of respective Corporation. As per the condition no. 32 of the license, the developer was to carry out and complete all the development works and after completing the same, was required to obtain completion certificate from the Competent Authority and the concerned Municipal Council was responsible only for maintenance of parks, streets, footpath, water supply, sewerage and street light etc. It was submitted that even section 14(1)(ii) of the PAPR Act, 1995 provides that in the case of colony, the promoter is responsible to obtain completion certificate from the Competent Authority to the effect that the development works have been completed in all aspects as per terms & conditions of the license. Regarding laying of electrical distribution system, it has been specifically mentioned in

condition no. 12 of the license that same was to be carried out as per design and specification of PSEB (and now PSPCL). For this, the developer was required to execute a separate agreement with PSEB which was very much clear from letter date 12.12.2019 written by PSPCL to the developer Shivalik group of company. A copy of the said letter was also enclosed.

- 25.1 It was further submitted that earlier there was no clear cut policy or instructions regarding taking over of electricity work, at the time when these project were taken over by the MC Kharar. It was the sole responsibility of PSEB (PSPCL) to look into electric works. However, new instructions were issued by Director, Local Government, Punjab vide letter no. 2021/28216 dated 20.07.2021, a copy of which was enclosed prescribing SOP/ Check list for the issuance of completion certificate to the colonies before they were finally taken over by the ULBs (urban local bodies) and para no.7 of the letter dealt with electrical distribution network which was reproduced as under:

"Affidavit by the developer to ensure that the entire internal electrical distribution network including the required capacity of transformers and transmission lines has been laid as per the drawing approved by PSPCL and to the entire satisfaction of PSPCL. It is mandatory for the ULBs to obtain NOC from the concerned department/authority before issuance of completion certificate."

- 25.2 Further, the above mentioned 12 colonies were handed over to the MC Kharar in Feb, 2016 after the resolutions regarding the same were passed by MC Kharar vide Resolution No.9 dated 09.12.2011 and Resolution No 90 dated 09.12.2011 after obtaining approval from Director/Local Government, Punjab. An

agreement was signed on 03.02.2016 between the promoters/developers of these colonies laying down the terms and conditions for taking over the colonies from the developers. A copy of the same was enclosed. It was clearly mentioned in the said agreement that the MC Kharar would only be responsible for maintenance of basic amenities i.e. parks, streets, footpath, water supply, sewerage and street light etc. Regarding electrical distribution system, nothing was mentioned in the agreement and was never taken over by MC Kharar and being the sole responsibility of the concerned department i.e. PSPCL. It was clearly mentioned in the agreement that if at any stage anything was found due towards any department, the promoters/developers would be liable to clear such dues. Similar condition was mentioned in condition no. 29 & 30 of the license. When the clearance for the electrical distribution system was granted by PSEB (and now PSPCL), all the related aspects or shortcomings were to be got resolved by PSPCL from the developers before any release of any connection to the residents.

- 25.3 Further, these projects were taken over by MC Kharar on 03.02.2016 and till that date, no letter for not taking over of these colonies was received by them from PSPCL and all the letters in which PSPCL had alleged that they had written to MC Kharar for not taking over these project, were written after 03.02.2016 and now under the garb of the letter dated 01.08.2018, they were trying to exonerate themselves whereas PSPCL could themselves proceed against the developer as per relevant provision and as per agreement entered with developer

and PSPCL. It has been added that PSPCL failed to produce any evidence to show that the matter for completion of the LD system was taken up either with the developer or with the licensing authority. The first reference was made by SDO, City, Kharar, PSPCL vide memo no 648 dated 27.04.2018 i.e. about 14 years after allowing connectivity to the residents of these project. PSPCL continued to release connections to the applicants right up to March, 2020 till it was stopped vide CE/Commercial, PSPCL letter dated 06.03.2020. After 14 years, PSPCL had realized that some dues were to be recovered from the developer and thereafter the release of connections to the residents was stopped vide CE/Commercial, PSPCL letter dated 06.03.2020 as mentioned in the interim order pronounced by the Commission on 02.11.2020.

26.0 M/s. Shivalik Developers and Promoters neither appeared on the date of next hearing i.e. 22.09.2021 nor deposited the cost of Rs.1 lac imposed vide order dated 19.07.2021 and reiterated vide order 27.07.2021. Thus vide order dated 24.09.2021, it was directed to initiate necessary action for compliance of the aforementioned orders and for recovery of the cost against M/s Shivalik Developers and Promoters. In the hearing, it was informed that the notice issued to Shivalik Vihar Structural Builders, Kharar Landran Road had returned unreceived. Vide order dated 24.09.2021, GMADA was directed to provide the details and address of the above said developers within a week so that further action is taken against the said developers. Since the information to be filed by the Director Local Bodies, Govt. of Punjab, as per Commission's order dated 27.07.2021 was not

submitted, the Director, Local Bodies, Govt. of Punjab was directed to appear on the date of hearing and file the above information within a week. Further, the information submitted by GMADA regarding the details of the bank guarantees/other securities against the colonies of Shivalik City and the action for encashing them for violation of the licensee conditions and handing over the amount to PSPCL for development of LD system left incomplete by the defaulting developers, was incomplete. GMADA was directed to submit the same without any delay.

27.0 Notices were issued to the other developers i.e. Shivalik Infrastructure and Developers Pvt. Ltd, & Shivalik Vihar Structural Builders on the address provided by GMADA to appear and file their respective reply within a week. However, nobody appeared on their behalf in the hearing held on 10.11.2021. Vide order dated 15.11.2021, the aforesaid developers were granted the last opportunity to appear and submit their respective reply well before the next date of hearing failing which appropriate action including imposition of costs would be taken. The Director, Local Bodies, Govt. of Punjab submitted a copy of the instructions for not taking over a colony without ensuring completed LD system which was taken on record. Further, Director, Local Bodies, Govt. of Punjab was directed to submit the status report on the bank guarantees or other securities available with them against these colonies of Shivalik City for encashing the bank guarantee and handing over the required amount to PSPCL for completion of LD system.

28.0 The Estate Officer, MC Kharar submitted an affidavit dated 10.05.2022 that till date MC Kharar had taken over 32 colonies of different developers falling within their municipal limit out of which 12 colonies belonged to M/s. Shivalik Developers & Promoters. The affidavit dated 28.07.2021 with regard to the status of these 12 colonies was earlier submitted. It was added that the developer was also required to submit bank guarantee to PSPCL as was clear from PSPCL letter 12.02.2019. For non completion of 4 other projects in accordance with the conditions of sanction, an FIR was logged against Shri Amardeep Singh Hira at Police Station Sadar Kharar, vide FIR No 7 dated 09.01.2021.

28.1 Further, with regard to the remaining 20 colonies, which were taken over by Municipal Council Kharar, a letter bearing no. 1521 dated 10-11-2021 was written to PSPCL to enquire about the completion of LD system and related electrical works. In response, vide letter no. 12941 dated 10.11.2021 and no. 1951 dated 28.12.2021, PSPCL had informed that the LD system and electrical works in these colonies were complete. With regard to these colonies, no further action was required at the level of MC Kharar.

28.2 It was further submitted that a letter was written to Executive Engineer, PSPCL by MC Kharar vide letter no 1765 dated 24.12.2021 enquiring about the completion of LD system and related electrical works in the colonies which had not been taken by MC Kharar. Notices were issued to concerned builders vide no. 2713 to 2743 dated 24.12.2021 for the same. As per the information supplied by the PSPCL/Builders, out of 30

colonies not yet taken over by MC Kharar, electrical works were complete for 14 colonies but were yet to be taken over by MC Kharar. The process of issuing completion certificate before they are finally taken over by MC Kharar would be done in accordance with the SOP / Check list issued by Department of Local Govt. vide letter no 28216 dated 20.07.2021. No further action was required at the level of Municipal Council Kharar with regard to these colonies. The action with regard to the pending 16 colonies, out of total 30 colonies yet to be taken over by Municipal Council Kharar, action would be initiated in accordance with rules and as per SOP/ Check list issued by Department of Local Govt vide letter no 28216 dated 20.07.2021.

29.0 During the hearing on 11.05.2022, Director, Local Bodies, Govt. of Punjab submitted that an affidavit in respect of the information asked for vide Commission's order dated 15.11.2021 was submitted on the date of hearing. Since the parties needed time to go through the said affidavit, it was directed to take up the matter on the date of next hearing.

30.0 In the hearing held on 22.06.2022, the Commission observed that no reply/comments were filed in response to the affidavit filed by Municipal Council, Kharar. Vide order dated 23.06.2022, the parties were given the last opportunity to file reply/comments to the affidavit filed by Municipal Council, Kharar within two weeks.

31.0 The Estate Officer, MC Kharar submitted an affidavit dated 02.08.2022 and referred to their earlier affidavit dated 10.05.2022. It was submitted that inadvertently due to an

oversight, the number of colonies in which complete LD system was installed by the developers as per NOC given by PSPCL was wrongly mentioned as 16 colonies instead of 9 colonies and further the number of those colonies in which complete LD System had not been installed by the developers as per NOC given by PSPCL was mentioned as 14 colonies instead of 21 colonies. It was undertaken that the remaining 21 colonies which were yet to be taken over by Municipal Council, Kharar, action would be initiated in accordance with rules and as per SOP/Check List issued by the Department of Local Government vide letter No.28216 dated 20.07.2021.

32.0 The matter was heard next on 03.08.2022. Municipal Council Kharar S.A.S Nagar Mohali filed an additional affidavit which was taken on record. Vide order dated 05.08.2022, the order was reserved.

Commission's Findings and Order

The petition sought quashing of CE/Commercial, PSPCLs memo no. 254-55 dated 06.03.2020 banning the release of new connections in the colonies in the Shivalik City, Kharar and further sought directions to the distribution licensee i.e. PSPCL to release electricity connections to the petitioners at the earliest. The main argument of the petitioners was that the denial of electricity connections to them by PSPCL was violative of Section 43 of Electricity Act, 2003 read with Regulation 5.1 of the Supply Code, 2014 as the distribution licensee i.e. PSPCL was bound to release connections to residents on application in terms of its licence. Further, pending the resolution of the issues regarding development of the LD system between the developers and PSPCL, which might take long

time, the residents could not be deprived of essential service like electricity for no fault on their part. Moreover, the electricity connections were given by PSPCL to thousands of residents in Shivalik City, Kharar and the refusal of the same to the petitioners residing in the same area was highly discriminatory and unjust, it being extremely difficult to live without electricity in the scorching hot weather.

On the other hand, PSPCL further submitted that the provisions of Section 43 of the E.A., 2003 should not be read in isolation. In the present case, the Shivalik City colony comprised of a group of 19 colonies to whom separate licenses were issued under Punjab Apartment and Property Regulation (PAPR) Act, 1995 under the terms and conditions of which, it was the responsibility of the developer to provide the electrical network (LD system) in the colony. Further, the provisions of Regulation 6.7 of Supply Code, 2014 make it obligatory for the developer to obtain NOC from PSPCL for developing the LD system. The developer has to accordingly lay the LD system in the colony as per approved NOC along with payment of prescribed charges towards electrical connectivity to the colony. After the complete LD system is laid and inspected by the Chief Electrical Inspector, PSPCL would take over the LD system, connect the same to its distribution system and would release connections to the residents of the colony. In spite of the statutory provisions of PAPR Act, 1995 and the Supply Code-2014 for development of LD system, the developer and its sister concerns had taken final NOCs for only 7 colonies, out of which LD system was complete in only 3 colonies and no Bank Guarantee was available against incomplete LD systems in the other colonies. The developers had neither developed complete

LD systems nor were they forthcoming to complete them. PSPCL further contended that Regulation 5.2 of the Supply Code, 2014 specifies that where an application pertained to an area that had not been electrified, the provisions of Regulations 6 & 8 for supply of electricity in such a case would be applicable only after electrification of that area as per the Investment Plan of the PSPCL approved by the Commission or the Scheme approved by the authorized agency of the State/Central Government. Under the terms and conditions of the license granted under PAPRA-1995, it was the responsibility of the developer to provide the electrical LD system in the licensed colony. Further, PSPCL decided to stop release of new connections in Shivalik City colony because the installed LD system by the developer at present was barely sufficient for supporting the already released approx. 1200 electricity connections and was totally inadequate for future power requirements of the colony. PSPCL thus prayed that for the licensed colonies, as in the instant case, the provisions of Section 43 of the E.A., 2003 would apply only after the developer fulfilled his obligation under the terms and conditions of license granted under PAPR Act, 1995 and the Supply Code-2014. PSPCL went on to add that the developer had considered all charges including electrical infrastructure towards his project cost and had already recovered the same through the sale of plots/flats and thus by not developing the LD system, his liability would be shifted to PSPCL and ultimately upon all the consumers of the state.

In this context, it is observed that the Commission in exercise of its powers, conferred under Section 181 of the Act read with all other powers enabling it in this behalf, notified PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 as amended from time

to time (hereinafter referred to as Supply Code, 2014) and Regulation 6.7 of ibid Regulations specifies as under:

“6.7 Supply of Electricity to Individual Consumers in the Residential Colonies/Multi-Storey Residential Complexes Developed under bye-laws/rules of the State Govt.

6.7.1 In the event of residential colonies/complexes developed by developers/builders/societies/owners/associations of residents/occupiers under bye-laws/rules of the State Govt. not covered under Regulation 6.6 above, the residents/occupiers of such colonies/complexes shall obtain individual connections directly from the distribution licensee. The release of such connections shall be governed by the following terms and conditions:-

a) The developer/ builder/society/owners/association of residents/ occupiers shall submit the complete lay out plan of the electrical network proposed to be erected in the colony and other documents prescribed by the licensee along with the processing fee as per Schedule of General Charges and obtain the preliminary NOC from the licensee. The NOC shall be issued by the licensee within 45 days of the receipt of proposal complete in all respects along with requisite documents. In case the developer/builder/society/owners/association of residents/occupiers withdraw his request or fails to comply with the conditions within stipulated time, the processing fee shall be forfeited.

Note: The developer/builder/society/owner/association includes any agency whether Govt./Local body or private that constructs the colony/complex.

b) For planning the L.D system of such colonies/complexes or to issue NOC, the following guidelines may be adopted by distribution licensee for assessment of expected connected load/ demand of such colonies/complexes:

.....
.....

- c) *The developer/ builder/ society/ owners/ association of residents/ occupiers may deposit the estimated cost of Local Distribution (LD) system of the colony as per approved layout sketch and get it executed from the distribution licensee. The expenditure of L.D system including service cable up to the metering point of each consumer and the 11kV system shall include cost of the material, labour plus 16% establishment charges there on. The phase wise development of LD system may be carried out by the licensee as per requirement but any cost escalation over a period of time shall be borne by the licensee. The distribution licensee shall be responsible to release individual connections within the time frame specified in Reg. 8. The expenditure incurred by the distribution licensee for providing connectivity to the colony shall also be borne by the developer/builder/ society/owners/association of residents, as the case may be. This shall include the expenditure incurred by the distribution licensee for providing the individual 11kV service line(s) to the colony (cable or conductor from pole/ tower of feeder/ distribution main to the colony premises/ metering point) and proportionate cost of common portion of the distribution main including breaker from nearest feeding grid sub-station having power transformer of 33-66/11kV or 132-220 /11kV, as the case may be, which is feeding the 11kV line connected to the colony, as per the Standard Cost Data approved by the Commission. In case the existing 11kV distribution main is required to be augmented/ extended/bifurcated or a new 11kV line/plant is to be erected to allow connectivity to any colony then such work shall be carried out by the distribution licensee at its own cost provided the applicant pays the full cost of service line and proportionate cost of the common portion of the augmented/extended /bifurcated /new distribution main including breaker as per the Standard Cost Data approved by the Commission. However, the developer/ builder society/owners/association of residents/ occupiers*

shall have the option to execute the works of internal L.D system of the colony/complex of its own in accordance with the layout plan/sketch approved by the distribution licensee subject to payment of 15% supervision charges on the labour cost to the licensee. In such case, the developer/builder society/owners/association of residents/occupiers, as the case may be, shall furnish a Bank Guarantee (valid for the period of NOC) from any bank registered and regulated by RBI equivalent to 20% of the estimated cost of the LD system of the colony to be executed by the developer/builder society/owners/association of residents/occupiers before the approval of the electrification plan and issue of NOC by the distribution licensee. This BG shall be returned after the developer fulfils the conditions of NOC and submit BG in case he avails partial connectivity from the distribution licensee. Provided that the distribution transformers and other material to be used for the internal LD System of the colony shall be as per the specifications approved by the licensee and shall be procured from the vendors approved by the licensee. The Distribution Transformers (DTs) may be procured by the developer from the distribution licensee. However, the developer shall be at liberty to procure the DTs from the approved vendors of the distribution licensee after getting the same inspected from the distribution licensee at manufacturer's site. A 21 days' notice shall be served on the distribution licensee by the developer to inspect the DTs. In case DTs are not inspected within 21 days from the date of receipt of notice by the distribution licensee from the developer, it shall be deemed to have been inspected and approved by the distribution licensee. Provided further that the phase wise development of LD system may be carried out by the developer/builder society/owners/association of residents/occupiers, as per requirement. In case the developer/builder/society/owners/association of residents/occupiers requests for energisation of incomplete/partial LD system,

the same shall be allowed provided the developer/ builder/ society/owners/association of residents/occupiers furnish a Bank Guarantee (BG valid for 3 years) from any bank registered & regulated by RBI equivalent to the estimated cost of balance works as per the cost of material and labour prevailing at the time of allowing connectivity for the partial load plus expected % age increase in the cost of material & labour in the next 3 years as may be approved by the Commission on the basis of increase in the cost during the preceding 3 years. This BG may be extended for each block of 3 years by increasing the base value with expected % age increase in the cost of material & labour as may be approved by the Commission. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the L.D system. After submission of Bank Guarantee to the satisfaction of the licensee, the BG accepted at the time of issue of NoC shall be returned to the developer and it shall be the responsibility of the licensee to release connections to the residents/ occupiers of the colony/complex according to the time frame specified in Reg. 8. After its completion and inspection by the Chief Electrical Inspector to Govt. of Punjab, the distribution licensee will take over the L.D system which will be connected to its distribution system. The distribution licensee shall thereafter maintain the L.D system at its own cost.

d).....

e) Each resident/occupant shall submit A&A form for supply of electricity to the distribution licensee in accordance with regulation 6 of Supply Code and connected load of each applicant shall be determined/computed as per regulation 4.5 of the Supply Code. The distribution licensee shall release the connections within time limits prescribed in regulation 6.8 & 8.

f) A developer/builder/society/owner/association of residents/ occupiers shall obtain separate connection for

common services under relevant category. The developer shall also be responsible to lay service cables up to the metering point of individual occupier's premises/common service connection points at its cost. In case meter is installed outside the consumer's premises, the service cable from the meter up to the main switch of the consumer shall also be provided at its own cost by the developer. The distribution licensee shall not recover any Service Connection Charges from individual consumers. However, applicant shall deposit Security (consumption) and Security (meter) as per Schedule of General Charges."

As per Section 43 of the Electricity Act, 2003, the obligation of the distribution licensee to provide supply of electricity in its area of supply is subject to the rules/regulations framed under the Act. The aforementioned Supply Code, 2014 regulations specify the procedure to be followed and conditions to be fulfilled by the developers in case of licensed colonies before the electricity connections are released by the distribution licensee. However, in this case, though the developers had taken NOC from PSPCL for some colonies, but had not completed the LD system. In remaining cases, the developers had not even approached PSPCL for taking the NOC. However, PSPCL also failed to take up timely action to take up the matter with the licensing authority regarding non-compliance by the developers with the conditions of licence in respect of obtaining NOC from the distribution licence and developing the LD system in the colony. Even PSPCL went ahead with issuing connections in the colonies for which NOC was not taken by the developers or the LD system was not completed by them. Keeping in view the foregoing and that the developer had not fulfilled the conditions of the license and the distribution licensee had failed to get the conditions of the licence

implemented by the developer, to extricate the residents from their hardship due to lack of electricity connections, the Commission vide order dated 02.11.2020 issued interim directions to PSPCL to release electricity connections to the residents of the 19 colonies of Shivalik City after recovery of Service Connection Charges/other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in this petition. PSPCL was also asked to recover any expenditure incurred on release of connections from the developer or the licensing authority or the delinquent officials/officers as per law.

Moreover, Govt. of Punjab, Department of Housing and Urban Development issued a notification dated 06.05.2008 which provides that the concerned departments including PSPCL shall ensure that no development work is started by the promoter before getting No Objection/Clearance Certificate, if required from the concerned Departments/Agency. The Paras 3 & 4 of the said notification provides as under:

- “3. No objection Certification from the different departments shall not be a precondition for issuance of licence for development of colonies, but the promoter shall be liable to get No Objection Certificate from the concerned departments e.g. Punjab Pollution Control Board, Punjab State Electricity Board, P.W.D. (Drainage Department), Forest Department or the concerned Municipal Corporations/Committees as the case may be before start of development works of the colony at site.*
- 4. A copy of the license shall be endorsed to the concerned Department by the concerned Competent Authority asking the said Department to ensure that the Development works shall not be started by the promoter before getting*

No. Objection/Clearance Certificate if required from the concerned Departments/Agency.”

In spite of the above guidelines by the Govt. of Punjab, PSPCL released electricity connections in the colonies even though the developers had not taken the mandatory NOC from PSPCL. The Government instructions reproduced above forbade the start of any development work without getting an NOC from PSPCL. PSPCL also failed to take up the issue with the licensing authority regarding the violation of the conditions of licence by the developer. Even the licensing authority failed to prevent the commencement of development work in the colony without issue of NOC by PSPCL and further failed to prevent the sale of properties to customers without ensuring the mandatory development in the colony as per license conditions.

Thus, despite clear provisions in the conditions of licence to take action against the errant developers, the licensing authority has not brought on record any action taken by it against the Developer except now, as an afterthought, lodging an FIR against one of the developers and issuing instructions for taking over the colonies. It is, though, an action too late since a substantial number of plots have already been sold and also occupied after construction of houses resulting in the present petition. This action is akin to trying to close the stable after the horse has bolted.

The Commission observes that people invest their lifelong earnings in purchasing a dwelling unit or a plot in an approved colony duly licenced by the licencing authority like PUDA/GMADA/M.C. with their sacred belief in the enforceability of the conditions of licence and robust development of requisite civic facilities including well-

developed local electricity distribution (LD) system and electricity connections. However, rampant violations of the conditions of licence by the Developers, e.g., non-development of LD system as in the instant case coupled with inexcusable inaction by the concerned departments results in undue harassment to the residents. In this backdrop, negligent attitude of the licensing authorities as well as PSPCL and their turning a blind eye towards violations by the Developers is alarming. Thus, the Commission has, with grave concern, observed that instead of taking proactive actions within their domains, the licensing and development authorities are more in denial and intent on passing the buck and blaming each other rather than enforcing their mandate and protecting the interest of the consumers while the errant developers get away scot free after deliberately avoiding their commitments as per the licensee conditions. Thus, the Commission directs the Secretary, Department of Housing and Urban Development, Govt. of Punjab and the Secretary, Department of Local Government, Govt. of Punjab to identify the lapses which led to collusive or lenient oversight of their officials regarding the violation of the conditions of licence by the Developers of the Shivalik City, Kharar and further fix responsibility and to take appropriate action against those responsible and also remedial measures to prevent recurrence of such lapses. Moreover, as a deterrent, the licensing authority should take immediate penal action against these developers and their Directors as per law. The Secretary, Housing and Urban Development, Govt. of Punjab and the Secretary, Department of Local Government, Govt. of Punjab may also look into inserting appropriate checks in licensing conditions to plug the loopholes which enable such developers to get away with appropriating the benefits of their license without meeting their

obligations to the detriment of their customers/buyers of plots. PSPCL also needs to take similar action against those responsible for providing electricity connections despite the Govt. instructions and licensing conditions being violated by the developers.

PSPCL has intimated that the cost of completing the LD system of the Shivalik City, Kharar is Rs. 662.5 lakh and that the MC Kharar may make efforts to place the amount at the disposal of PSPCL so that the pending works of the LD system are completed by PSPCL and electricity connections released to the individual residents/occupiers inside the colony. However, no one among GMADA, PUDA and MC Kharar has intimated about the availability of any security/BG obtained by these authorities to ensure compliance of conditions of license in these colonies. In this regard, the Commission refers to Section 5(3) of the PAPR Act, 1995 which prescribes that the licence is to be issued after the promoter has furnished a bank guarantee equal to twenty five percent of the estimated cost of the development works. Further, Department of Housing and Urban Development, Government of Punjab vide Memo No. 12092-98 dated 18.06.2013 reads as under:

“The promoter brought to the notice of the government that as per the provisions of PAPRA they have to deposit bank guarantee equivalent to 25 percent of the cost of internal development works to the licensing authority. But the Punjab State Power Corporation Limited (PSPCL) again asks them to deposit 150% of the estimated cost of electric works in the colony with it as bank guarantee. This is double bank guarantee for the same work puts extra burden on the promoter. It should either be the total responsibility of licensing authority to transfer the bank guarantee taken in lieu of electric works in the colony to PSPCL or the estimated cost for providing the electric works be excluded from the

total estimated cost for internal development and for electric works the PSPCL should take separate bank guarantee.

The Govt. has agreed to the suggestions of the Promoters and has decided that from now onward no bank guarantee against electric works to be carried out by the Promoters in his project under PAPRA 1995 shall taken by the licensing authority.”

Thus it is amply clear from the above that the Bank Guarantee was being taken from the Developers before the issue of this memo which also included and covered the electric works to be executed by the Developer. Moreover, as per the provisions of the PAPR Act, the Bank Guarantee is to be taken by the licensing authority from the Developer before the issue of licence. In this case, the licences were issued well before the issue of the above mentioned Govt. of Punjab memo dated 18.06.2013. Thus the Commission is of the view that the prescribed BGs must either be available or should have been obtained by the licensing authority. The concerned licensing authority is thus held responsible for failure to implement and monitor licensing conditions and directed to immediately pay Rs.662.5 lakh to PSPCL for completion of the LD system in the colony which was to be a part of Bank Guarantee for the licenses issued prior to the Govt. of Punjab memo dated 18.06.2013. It is also necessary for the licensing authority to follow up and ascertain from the police about the legal action taken against the developer pursuant to the FIR lodged against the developer on 09.01.2021. It would be appropriate for the higher authorities to review all similar actions to ensure justice and to discourage violations in the future.

PSPCL is also directed to keep releasing electricity connections to the residents of the colonies of the Shivalik City,

Kharar after recovery of Service Connection Charges/other applicable charges as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014. PSPCL shall also keep a separate account of the expenditure incurred on release of these connections and to recover the amount from the developers or the delinquent officials/officers as per applicable law. The Resident Welfare Association formed by the residents of the colony, the legitimacy and credentials of which will be ensured by PSPCL, shall take the electricity connection for common services from PSPCL. Further, PSPCL is also directed to take suitable action against the Developers for recovering the amount spent/to be spent on developing and completing the LD system in the colony and to investigate the lapses that led to issue of electricity connections in the colony even without NOC and to fix responsibility to prevent any such recurrence in the future.

Further, the licensing authorities and the distribution licensee i.e. PSPCL are directed as under:

Licensing Authority such as PUDA/GMADA and municipal authorities

1. Compliance of the conditions of licence by the Developers including the one for obtaining NOC from distribution licensee i.e. PSPCL be monitored regularly and a multilateral institutional mechanism be immediately set up. A mechanism be set up to ensure that the license conditions are complied with within the specified period failing which the required action as per law be initiated by the licensing authority.
2. To prevent cheating of customers, licensee should be allowed to sell plots, only after complying with the licensing conditions.

3. Clearance from the distribution licensee i.e. PSPCL be taken before giving completion/partial completion certificate for the colony.
4. Immediate action be taken against the Developers of the colonies in the Shivalik City, Kharar and their Directors as per law.
5. The municipal authorities should take over the licenced colonies only after ensuring that various civic facilities including the LD system have been provided as per the licensing conditions.

Distribution Licensee i.e. PSPCL

1. Expeditious reporting to the licensing authority be ensured in case the Developer fails to obtain the NOC within the stipulated time or fails to implement the conditions of licence related to PSPCL/electricity system.
2. It must be ensured that temporary electricity connections are issued only in the name of the Developer after the issue of NOC.
3. It must be ensured that the temporary connection is used only for the purpose for which it has been given.
4. The timeline to set up the LD system must be a part of the NOC
5. Formal mechanism be set up immediately to undertake periodic checking vis-à-vis the timelines for erection of the LD system as per the conditions of NOC.
6. Immediate action be taken against the Developers as per law for effecting the recovery of expenditure for laying the LD system in the colony.
7. The expenditure to lay the LD system and to release electricity connections be recovered from the service connection charges,

recovery from encashment of the Bank Guarantee with the licensing authority/its own resources, the Developers & from errant PSPCL officers. Any uncovered expenditure will be borne by PSPCL and will not be allowed as a pass through in the ARR.

Since this is a serious issue affecting many similar licensed colonies and their residents both in Local Govt. and Development authority areas, this Commission had earlier flagged the issues and also formally discussed it in the meetings with RERA, PSPCL and senior Govt. representatives to bring about appropriate policy changes to prevent similar violations in the future. As yet no action seems to have been taken to address the problem. Thus, in addition to the above, the policy making authorities in the Local Govt. and Housing and Urban Development Departments may now coordinate to devise a comprehensive policy to plug the above loopholes in the licensing procedures and conditions so that the hard earned savings of common citizens, who aspire to acquire plots for building their homes, are not jeopardized. Keeping that in mind, a copy of this order may be furnished to the Principal Secretaries of the above departments for further effective policy intervention.

Secretary, PSERC may also forward a copy of this order to the Chief Secretary, Punjab to as to apprise him of the issue so that coordinated policy correction can be done in the concerned departments and linked municipal and Development authorities. Further, immediate action, including attachment of bank accounts and properties in accordance with law, be taken to recover the cost of Rs.1 lac imposed on M/s. Shivalik Developers and Promoters along

with the additional penalty for their continuing failure to deposit the same.

The petition is accordingly disposed of.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 30.09.2022

