

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 3 OF 2023

In the matter of recovery of Permanent Disconnection consumer's arrears

Samant Buildcon Co. Pvt. Ltd..... Appellant
(Cons. No. 170015890790)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Bundgarden (MSEDCL)... Respondent No.1
Rashida Zendu Taherbhai Respondent No.2
Indubai Waman Narkhede.....Respondent No.3
Manoj Mathurawala.....Respondent No.4

Appearances:

Appellant	: Kapil Samant
Respondent No. 1	: 1. B.M. Sawant, Executive Engineer 2. S. R. Malpe, Addl. Executive Engineer 3. K. M. Lad, UDC
Respondent No. 2	: None
Respondent No. 3	: Sujata P. Narkhede
Respondent No. 4	: Manoj Mathurawala


Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing : (i) 10th April 2023
(ii) 4th July 2023

Date of Order : 9th August 2023

ORDER

This Representation was filed on 10th January 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 15.11.2022 in Case No. 67 of 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL, Pune Zone (the Forum). The Forum rejected the grievance application.


2. The Appellant filed this representation against the above order of the Forum. Its submissions and arguments are stated as below: -

- (i) The Appellant is the Developer and Promoter of the Scheme known as Gold Field Plaza, 45 Sassoon Road, Pune. As the Developer, the Appellant applied for various electric connections as and when required for Gold Field Plaza. The Appellant has its own office at Shop No. 9 in the same building. The details of this connection are as below:

Consumer No.	Name on the bill	Address on the bill	Sanctioned load (KW)	Date of Supply	Status
160232009150	Samant Buildcon Co. Pvt. Ltd, Off No .9	Gold field Plaza,45, Sassoon Road, Pune(M. Corp)	15	20.03.2009	Live

- (ii) The Respondent released a new common connection (No.170015890790) on 02.11.1991 for shops no. 12, 13, 14 and 15 which are located in the same building; the title of these shops has been parted with and alienated long ago. The particulars are as below: -

- (a) Shop No. 12: A Sale Agreement dated 31/10/2001 was executed between Samant Buildcon and Taherbhai. Subsequently, Deed of Assignment dated 28/11/2001 was executed between Taherbhai and Sunita Salvi. **Presently, Shop No. 12 is owned by Sunita Salvi since 2001.**
- (b) Shop No. 13: The Appellant does not have any knowledge about any agreement for Shop No. 13, being a very old document of the early 1990s. The same belonged to one Mr. Mohinish Thadani, who as per the Appellant's knowledge conveyed it to one Mrs. Indu Narkhede.
- (c) Shop No. 14: An agreement dated 03/04/1995 was executed between Samant Buildcon and Sonia Samant. After that, an Agreement dated 8/11/2001 was executed between Sonia Samant and Tirupati Travel Network Pvt. Ltd., who


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




as per the Appellant's belief, conveyed it further to one Mr. Hardeep Saini, who further sold it in favour of one Mrs. Indu Narkhede.

- (d) Shop No. 15: An Agreement dated 14/5/1993 was executed between Samant Buildcon and Sonia Samant. Further, an Agreement dated 2/5/2006 was executed between Sonia Samant and Manoj Mathurawala. Presently the structure is owned by Mr. Manoj Mathurawala.

(Note: The present owners of Shops No. 12, 13, 14 and 15 were made parties by this Authority being affected parties in the instant case, and were called for a second hearing which was held physically).

- (iii) The titles of the said shops were transferred a long back and the said Shops were not in the Appellant's possession and title for more than the last 26 years. The said shops have already been sold to subsequent purchasers. The said Sale Agreements were executed more than 26 years ago, and the Appellant is not aware whether the electricity meters and connection records were mutated or not. Furthermore, many of the purchasers have sold the shops to other parties. The property has thus exchanged several hands, and the Appellant has therefore no concern with them, since his title and responsibilities stand foreclosed. The Respondent No.1 has sent a Notice after more than 18 years of the last receipt date of March 2003, as can be seen from the copy of the bill to a third person i.e., Samant Buildcon Co. Pvt. Ltd who is not the owner of the said shops mentioned in the bill of Consumer No. 170015890790.
- (iv) The Appellant was shocked and surprised to receive a notice dated 05.08.2021 from Respondent No.1 with Ref. No. AKA / Wadia / Mahasul / No. 835 wherein the Respondent No.1 demanded an amount of Rs.13,13,600/- for a disconnected Meter having Consumer No.170015890790. This was without citing the legal source, provision, or authority to recover the amount of a disconnected meter (Consumer No.170015890790) which is shown as Shops No. 12, 13, 14, and 15 of Gold Field Plaza, 45, Sassoon Road, Pune.
- (v) As per this Notice, the Respondent No. 1 has mentioned that the outstanding recovery amount for Consumer No. 170015890790, will be included in the bill of the Consumer No. 160232009150. This is a perverse demand because this Consumer



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



No. 160232009150 belongs to Samant Buildcon Co. Pvt. Ltd. for Office No. 9. Without any reason or clarification, the Respondent No.1 cannot include or merge the outstanding bill of Consumer No. 170015890790 with Consumer No.160232009150 belonging to Samant Buildcon Co. Pvt. Ltd i.e. the Appellant herein. It is pertinent to note here that the consumer's name is shown as *Samant Builders Pvt. Ltd* in the bill of Consumer No. 170015890790 and not as *Samant Buildcon Co. Pvt. Ltd*. There is no such entity by the name of "*Samant Builders Pvt. Ltd*".

- (vi) The Respondent No. 1 ought to have taken steps towards recovery proceedings against the owners of the respective Shops i.e. Shop no. 12,13,14, and 15 as mentioned in the bill of the Consumer No. 170015890790, and not against the Appellant. The respective owners of the said shops No. 12, 13, 14 and 15 had been using the said meter until March 2003. There is a last receipt of payment on 13/03/2003 which clearly shows that they were paying their respective bills until 13/03/2003. The Appellant never received any notice from the Respondent No. 1 regarding the Consumer No. 170015890790 till the above-mentioned notice dated 05/08/2021. The disconnection of the meter in question having Consumer No. 170015890790 was made in August 2005. Thereafter the Respondent No.1 never sent a notice in 16 years.
- (vii) The demand of recovery of the outstanding Bill of Consumer No. 170015890790, which is mentioned in the Notice dated 05/08/2021, is hopelessly barred by Section 56(2) of the Electricity Act, 2003 and as such the limitation prescribed therein comes into place. This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of Hon'ble Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions in Case of Maharashtra State Electricity Distribution Company Limited V/s. Electricity Ombudsman, Mumbai. It pointedly observed:

"Unless and until the preconditions set out in sub-section (2) of Section 56 are satisfied, there is no question of the electricity supply being cut off. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable. The Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in sub-section (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.”

- (viii) The Appellant also referred the Judgment dated 18.02.2020 in **Civil Appeal No.1672 of 2020** of the Hon’ble Supreme Court of India in the matter of **Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Another v/s. Rahamatullah Khan alias Rahamjulla**, which has held:

“Sub-section (2) of Section 56 by a non obstante clause provides, notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became first due, unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.”

- (ix) The Additional Executive Engineer, Wadia Subdivision, Pune has falsely mentioned in the notice dated 05/08/2021 that the Appellant’s meter having Consumer No. 160232009150 is found in the place of the disconnected meter having Consumer No. 170015890790. The concerned meter is for Office No. 9 and is affixed at the parking wall in the meter box and not at the site of the disconnected meter.
- (x) The Appellant had replied to the notice dated 05/08/2021 vide their reply dated 11/8/2021 and further reply dated 25/08/2021 along with supporting documents, but MSEDCL did not revoke or withdraw the notice.
- (xi) The Executive Engineer, Bund Garden Division issued a letter dated 09/09/2021 to the Additional Executive Engineer, Wadia Subdivision to take necessary action in



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the matter. Thereafter the Respondent No. 1 added the outstanding amount of the Consumer no. 170015890790 for the Shop No. 12, 13, 14 and 15 onto the Consumer No. 160232009150 of the Appellant for Office No. 9, thus showing a gross abuse of authority and power, and burdening the Appellant due to no fault of it, and demanded to pay arrears for electricity charges which they have not even consumed.

- (xii) The said impugned notice dated 05/08/2021 for recovery is grossly unjust and not only bad in law but amounts to travesty. Even more so after a lapse of 18 years since the last receipt date of 13/03/2003, and after 16 years of disconnection and therefore being patently time barred. The question that naturally arises is what the Respondent No. 1 was doing since April/May 2003 when any outstanding amount became “first due”, and since August 2005 after disconnection.
- (xiii) Both the Consumer ID Nos. are different, the title holders are different, their Legal entity is different, their structures are different. The Appellant is not the owner of nor in possession of Shop No. 12, 13, 14 and 15. The Appellant does not hold any right, or title of the concerned structures. Therefore, the said Notice dated 05/08/2021 is illegal, and the Appellant is not liable to pay the amount mentioned in the said notice.
- (xiv) Single Bench order dated 18.02.2020 in W.P. No 10536 of 2019 of Hon’ble Bombay High Court in Maharashtra State Electricity Distribution Co. Ltd V/s. Principal, College of Engineering, Pune, which has a direct bearing on the case, is based on the Full Bench Judgment dated 12.03.2019 in Maharashtra State Electricity Distribution Company Limited V/s. Electricity Ombudsman, Mumbai in Writ W.P. No 10764 of 2011 & Other WPs was a binding precedent. Dismissing a Review Petition filed by the Maharashtra Electricity Distribution Company Ltd, the single Bench of this Hon’ble Court held:


“26. While examining 56(2) the Full Bench held that a consumer cannot be vexed in the event the licensee is negligent in recovering the amount due. If the views of CAG is treated as correct, in that event the electricity charges on the basis of tariff category LT-I became due from September, 2012. For the next two years from September, 2012 there is nothing on record to show that the petitioner had raised any bill or attempted to recover electricity charges from the respondent under LT-I tariff category. Even after two years no such bills


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



were raised. First time on the basis of LT-I tariff category bill was raised on 17.03.2018. The language used in sub-section (2) is "when such sum became first due" in contradistinction to such sum being first billed. Period of limitation will commence when such sum became first due. Admittedly, as per the petitioner such charge or sum became first due in September 2012 but billed for the first time on 17.03.2018. In such circumstances, it was not open to the petitioner to raise the supplementary bill retrospectively on 17.03.2018 for the period from September, 2012 and thereafter issue disconnection notice.

- (xv) The Appellant made an online Application on 12/10/2021 expecting to reach the Internal Grievance Redressal Cell (IGRC), demanding revocation of the notice dated 05/08/2021, but the Respondent No. 1 has closed that complaint and sent an email on 09/11/2021 stating that their consumer number is “live in the same premises” where the Consumer No. 170015890790 was disconnected.
- (xvi) The Appellant approached the Forum in Case No. 67/2021. The Respondent No. 1 had mentioned that, as per Flying Squad report dated 28/06/2019, and based upon guidelines issued by the MSEDCL, Mumbai to various zones in Maharashtra, they have acted accordingly and sent the above-mentioned notice dated 05/08/2021. Being aggrieved by the said notice and the Order of the Forum, the Appellant has approached the Electricity Ombudsman with the prayer to set aside the Order of the Forum dated 15/11/2022 and resultantly the Notice dated 05/08/2021.
- (xvii) The Forum, in the reasoning of its order, has observed that as per the guidelines issued by the MSEDCL, Mumbai having reference No. 19021 dated 06/07/2013 and guideline No. 4 therein, it is valid to recover the dues from this Appellant. The Forum has completely ignored the fact that the same has to be done as per Section 56 of the Electricity Act, 2003. Moreover, the alleged Arrears of Consumer No. 170015890790 are of the year 2003, and the Guidelines are issued much later in the year 2013 and MSEDCL has issued the notice for the first time in 2021. The arrears, if any, became first due on April/May 2003 and never have the MSEDCL demanded such arrears till August 2021. In fact, even after the guidelines issued by the MSEDCL dated 06/07/2013, never have the MSEDCL demanded such dues till


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



August 2021, or shown it as due and payable continuously. As such the Provisions and Section 56 (2) squarely applies to this case.

(xviii) **Grounds of Challenge:**

- A. Such a retrospective recovery relating to the period prior to August 2005 is bad and illegal in law.
- B. The Appellant have no title or interest or possession in the said Shops for which the meter having Consumer No.170015890790 was being billed, and have parted title way before any sum was due and the respective owners were continuously paying the respective electricity bills till March 2003.
- C. The demand of recovery of the outstanding Bill for Consumer No. 170015890790, is hopelessly barred by Section 56(2) of the Electricity Act 2003.


(xix) Nature of main relief sought from the Electricity Ombudsman:

To quash and set aside the Order dated 15/11/2022 passed by the Forum in Application No. 67/2021, and thereby also the Notice issued by the Additional Executive Engineer, Wadia Subdivision of MSEDCL for the recovery of amount of Rs. 13,13,600/- plus any interest levied thereon.

3. The Respondent No. 1 MSEDCL has filed its reply dated 02.03.2023. Its submission and arguments are stated as below:

- (i) The Appellant was a LT Consumer (No. 170015890790) from 02.11.1991 and the supply was released for shop No. 12, 13, 14 & 15 at Gold Field Plaza,45, Sasoon Road, Pune-411001. Due to the non-payment of electricity bill, the supply was permanently disconnected in the month of August 2005 for the amount of Rs.13,13,600/-. The details are tabulated below:

Consumer No.	Name on the bill	Address on the bill	Sanctioned load (KW)	Date of Supply	PD Arrears (Rs.)	Status
170015890790	M/s Samant Bldrs Pvt. Ltd	Opp. Wadia,Shop 12,13,14 & 15, Gold field, 45, Sasoon Rd.	57	02.11.1991	13,13,600/-	PD from Aug. 2005


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (ii) During the hearing, an issue was raised as to why there was only one common original connection for 4 shops, and that too of a high load of 57 KW. No satisfactory reply to this issue came forth. The Respondent's Corporate office issued guidelines for recovery of arrears from PD consumers vide Circular No. P.COM/Accts./19021 dated 06.07.2013. It was indicated that


"3) The field Officer Should periodically verify the premises of PD consumers having arrears (on record).

4) In the premises of any PD consumer in arrears, if there is other live connection of the same PD consumer or of his legal successor found, then entire PD arrears with interest & DPC should be diverted on such live connection.

5) In premises of any PD consumer in arrears, if there is any live connection of any other person found, who is not legal successor of P.D. consumer, then the last six months arrears (before TD) of such PD consumer should be diverted on said live connection as per Reg. no. 10.5 of MERC (ESC&OCS) Regulations-2005.

6) If any PD consumer in arrears is having any live electricity connection in same or other sub-division, division, circle or zone, then the entire PD arrears with interest and DPC should be diverted on said live connection of same PD consumer."

- (iii) The Flying Squad, Pune inspected the premises of the Appellant on 13.09.2019 for verification of PD consumers. During inspection, it was found that there were arrears in the premises of PD consumer No. 170015890790. However, new connections were released in the said premises. On the same name, there is a live connection from 20.03.2009 bearing Consumer No. 160232009150 and Meter No. 07605034224.
- (iv) As per the report of Flying Squad dated 28.09.2019 and as per the MSEDCL circular P.COM/F&A/19021/ dated 06.07.2013, intimation was given to the Appellant for payment of outstanding arrears of Consumer No.170015890790.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



In the said letter it was informed that in the event of non-payment of the said arrears, the same would be shifted/transferred to the Appellant's existing Live connection bearing Consumer No.160232009150. Accordingly, arrears of PD Consumer No.170015890790 were shifted/transferred on to the existing live connection of the Appellant bearing Consumer No.160232009150 on 15.09.2021.

(v) The Respondent referred to the following orders passed by Hon. Ombudsman, Mumbai regarding transfer and recovery of PD arrears in support of its action.

(a) Case No. 62 of 2012 dated 22.10.2012

(b) Case No. 34 of 2013 dated 24.05.2013

(c) Case No. 78 of 2008 dated 16.12.2008


(vi) As per the record of MSEDCL, PD Consumer No. 170015890790 was basically in the name of the Appellant, Samant Buildcon Pvt. Ltd. though there was a minor spelling mistake, and it was recorded as "Samant Builders Pvt. Ltd." This mistake is inconsequential and does not affect the basic issue. It is the responsibility of the consumer to communicate any change in ownership/title of the premises to the Respondent/MSEDCL. In the present case, the Appellant did not communicate any such change in ownership to the Respondent.

(vii) Therefore, it prayed that the Representation of the Appellant may be rejected.

4. The Respondent 2, Rashida Zendu Taherbhai (Shop No. 12) did not submit any say, nor was any person present on her behalf for the hearing. During the hearing, it came to Respondent No. 1's knowledge that the said premises is closed and has no electricity connection.

5. The Respondent 3, Indubai Waman Narkhede (Owner of Shop No. 13 and 14), who was represented in the hearing, has filed her written statement. Her submissions and arguments are as below:


(i) Shop No. 13: Mrs. Kavita R. Thakur & Shri Ramesh F. Thakur originally purchased the shop from the Appellant vide Regn. No. 1146/03/29 of 1992 dated 13.12.1992. Their new electricity connection No.160232014510 was released on 08.03.2010.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Subsequently, the said shop No. 13 was purchased by the Respondent 3, Indubai Narkhede in February 2012. Currently it bears connection No. 160232014510.


- (ii) Shop No. 14: The first agreement was executed between the Appellant and Sonia Samant on 03.04.1995. The second agreement was executed between Sonia Samant and Tirupati Travel Network Pvt. Ltd. on 08.11.2001. The third agreement was executed between Tirupati Travel Network Pvt. Ltd. and Kirit B. Shah + Harshal K. Shah on 18.10.2007. The fourth agreement was executed between Kirit B. Shah + Harshal K. Shah and Hardeep D. Maini + Paramjeet Kaur H. Maini on 19.11.2007. Lastly, the fifth agreement was executed between Hardeep D. Maini + Paramjeet Kaur H. Maini and Indubai W. Narkhede on 04.11.2010 having electricity connection No. 160232049941 which was released on 05.02.2008. The change of name to Respondent No. 4 has been done. There are no arrears pending till date, and the said connection No. 160232049941 is PD since a few years, being vacant, and the premises are kept locked. Indubai Narkhede is the fifth purchaser out of five purchasers. The present purchaser is not in the period of default on arrears.
- (iii) The Respondent 3 is the owner of the said shop since April 2012. Respondent No.1 MSEDCL never sent any notice before 19.04.2023. As per Section 56 (2) of the Electricity Act, 2003, the Respondent No. 1 cannot recover arrears after about 18 years, and which was not used by Respondent No. 3.
- (iv) After the first hearing on 10.04.2023, the Respondent No. 1 MSEDCL issued a notice to Respondent No. 3 (Shop 14 owner) bearing Consumer No. 160232049941 vide No. AEE/Wadia/Acc/580 dated 19.04.2023 demanding to pay arrears of Rs.13,13,600/- of C.No.170015890790. The said demand was summarily rejected being not justified as per law.
- (v) It is prayed that:-
- a) Respondent 3 may be deleted from the instant Representation.
- b) The notice dated 19.04.2023 issued by Respondent No. 1 MSEDCL may be quashed and set aside.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



6. The Respondent 4, Manoj Mathurawala (Owner of Shop No. 15) was present in the hearing, and has filed his written statement. His submissions and arguments are stated in brief as below:

- (i) The Respondent No. 4 has an electric connection having Consumer No.170015580677 from 23.01.1991 for Unit No 15, Ground Floor of the Gold Field Plaza Complex, 45 Sasoon Road, Opp Wadia College, Pune 411001. The same consumer number and date of allotment existed when the Respondent No.4 purchased the said Unit No. 15 from Sonia Vijay Samant on 02.05.2006 vide Deed No. 3099/2006, duly registered at the office of the Sub Registrar, Haveli No.7, Pune. The same consumer number and date of allotment existed when Sonia Vijay Samant purchased the said Unit No. 15 from Samant Buildcon Co. Pvt. Ltd. through its Managing Director Madan T. Samant on 14.05.1993.
- (ii) It is important to note that **Samant Buildcon Co. Pvt. Ltd. had applied for an electricity connection which was released on 23.01.1991 for Unit no 15**, when it was not even sold to anyone by the said Developer. The floor of these Units is not mentioned on the bill. The Complex may have similar Unit Numbers on the Lower ground floor, Upper Ground Floor for Shops and Offices on upper floors.
- (iii) The Respondent No. 4 is in settled possession in the Complex for many years. He has knowledge of various transactions which occurred in the said premises. He stated that
 - 1) The first sale of Unit 12 on the upper ground floor was completed only in November 2001.
 - 2) The Appellant has stated that the details of first sale of Unit 13 to Mohinish Thadani is not known to him. (However, Mohinish Thadani appears to have signed as a witness in some deeds as early as 1995, which means that he was known to the office bearers of Samant Buildcon Co Pvt Ltd.)
 - 3) The first sale of Unit 14 on the upper ground floor was completed in 1995.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (iv) The above-mentioned details clearly suggest that the current **Unit Holders 12, 13 & 14 came into the picture only after their purchase and possession which happened at different times, i.e. 2001, 2010 and 2012.**

The disputed electricity meter with Consumer No. 170015880790 was fixed on 02/11/1991 to one Samant Builders Pvt. Ltd. for Unit nos. 12,13,14 & 15.


Therefore, only Samant Buildcon Co. Pvt. Ltd. the " Developer and Seller " of the said Units are responsible for electricity consumption against Consumer No. 170015890790 since 02/11/1991 in the name of Samant Builders Pvt. Ltd. for Unit nos. 12,13 ,14 &15, and its use till 2003.

- (v) The present address on the Appellant / developer's electricity bill states - Office no 9, Gold Field Plaza, 45, Sasoon Road, Pune, Consumer no 160232009150, and the Supply date is 20/03/2009.

What was the source of electricity supply to Office no 9, Gold Field Plaza Complex, Pune, before 20/03/2009? The electricity meter with consumer no. 170015880790 (disconnected permanently in 2005) and the electricity meter with consumer no. 160232009150 issued to Samant Buildcon Co Pvt Ltd in 2009 bear the same location of installation i.e. the same meter cabin. It clearly establishes that the Appellant made an application for electricity meter in the year 1991 while construction of the Gold Field Plaza Complex was in progress.

7. Post hearing, the Respondent 4 (Manoj Mathurawala, Owner of Shop No. 15) has filed his additional say on 24.07.2023 regarding the sequence of sales of the concerned shops.

- (i) Samant Buildcon Co. Pvt. Ltd. has its Incorporation Date as 06/05/1988 and the Directors on incorporation were :1) Tarachand Chhabildas Samant 2) Madan Tarachand Samant 3) Ashok Tarachand Samant, 4)Dhanesh Tarachand Samant & 5) Vijay Tarachand Samant
- (ii) **Unit 12:** Events of Sale of Unit 12 is as below:
- 25/03/1991 - Letter of Allotment to Taherbhai
 - 26/04/1991 Agreement in favour of Taherbhai



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- 31/10/2001 Deed of Confirmation to Taherbhai and subsequent Deed of Assignment to Sunita Dalvi by Taherbhai.

Unit 12 was under construction and not occupied up to 2001 as mentioned in the Deed of Confirmation. The electricity connection was allotted to Unit 12 on 02/11/2001.

- (iii) **Unit 13** Mohinish Thadani has signed as a witness to an Agreement dated 26/04/1991 between Samant Buildcon Co. Pvt. Ltd. and Mr Taherbhai for Unit no. 12, as a witness to an Agreement dated 03/04/1991 between Samant Buildcon Co. Pvt. Ltd. and Sonia Vijay Samant for Unit no. 14, and as a witness to an Agreement dated 14/05/1993 between Samant Buildcon Co. Pvt Ltd and Sonia Vijay Samant for Unit 15. Thus, Mohinish Thadani was an associate of Samant Buildcon Co. Pvt. Ltd.
- (iv) **Unit 14** was sold to Sonia Vijay Samant by Samant Buildcon Co. Pvt. Ltd. on 03/04/1995, and then the Deed of Assignment was made by Sonia Vijay Samant in favour of M/s. Tirupati Travels Pvt Ltd on 08/11/2001.
- (v) **Unit 15** was sold to Sonia Vijay Samant by Samant Buildcon Co. Pvt. Ltd. on 14/05/1993 and then a Deed of Assignment was executed by Sonia Vijay Samant in favour of Manoj Mathurawala on 02/05/2006.
- (vi) **Conclusion -**
- Unit 12 was under construction and not in use till 2001.
 - Unit 13 – sale trail not clear.
 - Unit 14 was sold to and was in possession of the wife of a director of Samant Buildcon Co Pvt Ltd till 2001.
 - Unit 15 was sold to and was in possession of the wife of a director of Samant Buildcon Co Pvt Ltd till 2006.
- (vii) **Once these Units were sold to third parties through the family members /associates of M/s Samant Buildcon Co Pvt Ltd and possession was handed over only in 2001 or thereafter, the Developer M/s Samant Buildcon Co. Pvt. Ltd.**


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




stopped paying bills of the disputed meter used by their office and the same was disconnected in 2003 and permanently removed in 2005 without the knowledge of any of the above new purchasers.

- (viii) The Representative of Samant Buildcon Co. Pvt. Ltd. admitted during the hearing on 04/07/2023 that their office no 14, situated on the first floor (one of the largest in the complex) was using electricity from the supply allotted for other areas / amenities till they applied and received electricity connection in 2009.
- (ix) Incidentally, the disputed electricity meter connection was allotted a 58 KW supply.
- (x) The electricity meter allotted to M/s Samant Buildcon Co Pvt Ltd in 2009 was placed in the same spot as the disputed electricity meter permanently removed in 2005, as stated by the MSEDCL.
- (xi) All the above points were raised by owners of Units 13, 14 & 15 in the hearing held at the Ombudsman Office, Mumbai on 04/07/2023 to confirm that they have no connection to shops no. 12, 13, 14 & 15 mentioned on the electricity bill.

Analysis and Ruling: -

8. Heard the parties and perused the documents on record. The Appellant (Samant Buildcon Co. Pvt. Ltd.) is the Developer and its incorporation date is 06/05/1988. It is the Developer and Promoter of the Scheme known as Gold Field Plaza, 45 Sasoon Road, Pune. During the hearing it was clarified that this complex consists of shops / units on the lower and upper ground floors and offices on the floors above these. The alleged Shops No. 12 to 15 are located on the upper ground floor, while the current Office No.9 of the Appellant is located on the upper office floors. The dispute is related to the common electricity connection No. 170015890790 released to Shops 12, 13, 14 & 15 in the year 1991. The said connection was permanently disconnected in August 2005. Looking at the sale trail of these shops and the information provided by the parties, it is seen that the transfer from builder to the first parties occurred around 2001 (Unit 12), 2001 (Unit 14) and 2006 (Unit 15). Till then, it seems that the connection was being used by the builder. After these sales, the developer stopped paying the bills, leading to its disconnection in 2003 and


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



removal of the meter in 2005. The current owners came into the picture only around 2001 (Unit 12), 2012 (Unit 13), 2010 (Unit 14) and 2006 (Unit 15).

9. The Flying Squad of the Respondent inspected the premises of the Appellant on 13.09.2019 for verification of PD consumers. During inspection, it was found that there were arrears against the premises of PD consumer No. 170015890790. On the same name (Samant Buildcon, Office No.9) and in the same complex, there is another live connection of the developer / Appellant from 20.03.2009 bearing Consumer No. 160232009150. Therefore, a notice dated 05.08.2021 was issued to the Appellant by the Respondent No.1 MSEDCL demanding an amount of Rs.13,13,600/- for the said disconnected Consumer No.170015890790. These arrears were transferred to its live Consumer No. 160232009150. Its details are tabulated as below: -


Sr. No.	Consumer No.	Name on the bill	Address on the bill	Sanctioned load (KW)	Date of Supply	Status	Remarks
1	170015890790	M/s Samant Bldrs Pvt. Ltd	Opp. Wadia, Shop 12,13,14 & 15, Gold field, 45, Sasoon Rd.	57	02.11.1991	PD from Aug. 2005	Last payment made on 13.03.2003
2	160232009150	Samant Buildcon Co. Pvt. Ltd, Off No .9	Gold field Plaza, 45, Sasoon Road, Pune(M. Corp)	15	20.03.2009	Live	PD arrears of Rs.13,13,600/- of C.No. 170015890790 was tranferred to the live cons. 160232009150 on 15.09.2021

10. The Appellant contended that the connection of Consumer No.170015890790 does not belong to it but applies to Shops 12, 13, 14 & 15 which are separate entities. However, the Appellant could not explain the following anomalies:-

- ✓ If there were 4 separate shops, why was a common connection taken by the developer, and bills paid by him till 2003?
- ✓ Why was a high load of 57 KW taken for this common connection?

The explanation provided for this by the Respondent No. 4 seems plausible. The builders were apparently using this connection, till around 2003.

11. After the first hearing on 10.04.2023, the Respondent issued notices for outstanding dues against Consumer No.170015890790 to the Units No. 12, 13, 14 & 15. Thus, it seems that MSEDCL has tried to recover the outstanding dues, first from the original consumer i.e. the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



developer / Appellant, and then from the current owners / Respondents, as both sides are trying to pass on responsibility to the other.

12. Details of the electric connections, Sanctioned Load, addresses, date of supply etc., for Units 12, 13, 14 & 15 are tabulated below:

Unit 12			Unit 13			Unit 14			Unit 15		
Occupation Period	Name	Consumer No.	Occupation Period	Name	Consumer No.	Occupation Period	Name	Consumer No.	Occupation Period	Name	Consumer No.
	Samant Buildcon			Samant Buildcon			Samant Buildcon			Samant Buildcon	Cons.170015580677
25.03.1991	Letter of Allotment	Not Known	About 1994	Mohnish Thadani	Not Known	03.04.1995	Sonia Samant	Not Known		Madan T. Samant	released on 23.01.1991
↓			↓			↓			↓		
26.04.1991 to 31.10.2001	Taher Taherbhai	Not Known	13.12.1992 to Feb 2012	Kavita Thakur	Not Known	08.11.2001	Tirupati Travel Network Pvt. Ltd.	Not Known	14.05.1993 to 02.05.2006	Sonia Samant	
↓			↓			↓			↓		
31.10.2001 Deed of Confirmation	Unit 12 was under construction and not occupied up to 2001		01-02-2012	Indu Narkhede	160232014510 released on 08.03.2010 (This connection is for Unit 13.)	18.10.2007	Kirit B. Shah + Harshal K. Shah	Not Known	02.05.2006 till date	Manoj Mathurawala	
↓			Remarks:This Cons. No. 160232014510 is from 08.03.2010. At present the name on connection is Indubai Waman Narkhede and address is Gold Field Plaza, Unit 13, S No.45, Sasoon Road Pune 411001			↓			↓		
28.11.2001 onwards	Sunita Salvi	Not Known				19.11.2007	Hardeep Maini	Cons.160232049941 released on 05.02.2008 (This connection is PD)	Remarks:This Cons. No. 170015580677 is from 23.01.1991. At present the name on connection is Mathurawala Manoj and address is 45, Sasoon Rd Unit No. 15 Pune 411001		
↓											
Remarks:This Cons. No. 160232049941 is from 05.02.2008. At present the name on connection is Indubai Waman Narkhede and address is Gold Field Plaza,CTS 45B, Sasoon Rd., near Wadia College, Pune 411001											

13. Considering the various submissions of the parties, the following issues are framed for determination of the case.


Issue 1: Whether the MSEDCL is within its legal right to recover the outstanding dues of a permanently disconnected consumer no. 170015890790 after 17 years?

The answer is in the AFFIRMATIVE.

The Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 came in force from 25.02.2021. The regulations relating to old outstanding dues of permanent connection (PD cases) is reproduced below:

“12. Change of Name

12.5: Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Consumer or the erstwhile


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be"

16. Billing

.....

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

16.9.3. In case of premises which are permanently disconnected or demolished for reconstruction, the liability of the arrears, if any, shall be passed on to the owners / occupiers.


It is crystal clear from the above provision that the Respondent is entitled to recover arrears even beyond 2 years, in the case of a PD consumer. The electricity dues, where they are statutory in character under the Electricity Act, 2003 and as per the terms and conditions of supply, cannot be waived of in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003. The period of limitation under Section 56(2) is applicable to the sum due under Section 56 for live consumers and not PD consumers.

Hon'ble Supreme Court by its Judgement dated 19th May 2023 in Civil Appeal No 2109-2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Ors. has concluded regarding the recovery of PD arrears as below:

" I. Conclusions

328. The conclusions are summarised below:


- a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;
- b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

- c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;*
- d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;*
- e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;*
- f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;*
- g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;*
- h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;*
- i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- j. *In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.*
329. *Pending applications, if any, shall stand disposed.*”

Considering all these aspects, Issue 1 is answered in the affirmative.

Issue 2: Whether the Developer, Samant Buildcon Co. Pvt. Ltd. (Cons. No. 160232009150) is liable to pay the arrears of PD consumer No. 170015890790?


The Issue 2 is answered in the AFFIRMATIVE.

The Tabulated chart of this PD consumer is reproduced below:

Consumer No.	Name on the bill	Address on the bill	Sanctioned load (KW)	Date of Supply	PD Arrears (Rs.)	Status
170015890790	M/s Samant Bldrs Pvt Ltd	Opp. Wadia, Shop 12,13,14 & 15, Gold field, 45, Sasoon Rd.	57	02.11.1991	13,13,600/-	PD from Aug. 2005

The records indicate that the developer was paying the common electricity bills of shops / Units No. 12 to 15 till around 2003. The high sanctioned load of 57 KW itself indicates that the power supply was used by the Developer and not by individual consumers of Shops 12, 13,14 & 15. Another anomaly has come to notice, for which the Appellant again had no satisfactory explanation. Out of the Units no. 12 to 15, Units no. 13 & 14 got new connections in 2010 and 2008. However, Unit no. 15 got a separate connection (Consumer No. 170015580677) on 23.1.1991 itself. Thus, it seems that Unit no. 15 had 2 connections right from 1991, one a separate connection (No.170015580677) and the other a part of the common connection (No. 170015890790). Why were 2 connections taken by the builder for the said unit? This remains unanswered.

According to the Respondent no. 4, construction work of the complex was going till the year 2001, and the meter of Office No. 9 of the developer was installed in place of the removed


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



meter of the PD consumer (No. 170015890790) This was confirmed by MSEDCL. From the above discussion, it can be concluded that the Developer, Samant Buildcon Co. Pvt. Ltd. had taken various connections as per his convenience during the construction period, and was using these connections apparently at cross purposes. The overall control of the complex was in the hands of the Appellant / developer during the period in question. Since the developer had consumed the electricity, he is duty bound to pay for the same. Considering all these aspects, Issue 2 is answered in the affirmative.

14. While issuing the above order, it was observed that some portion of the arrears seems to be fictitious. The Respondent is advised to look into this aspect and take action at its level.

15. Also, it is noted that Samant Buildcon Pvt. Ltd. and Samant Builders Pvt. Ltd. is one entity since another connection with C.No.170015555486 is in the name of Samant Builders which is used for common lighting at present.


16. The Forum's order is modified to the above extent.

- a) In view of the above, the representation of the Appellant is rejected principally with the above observation.
- b) The Respondent is directed not to levy interest and DPC on PD arrears.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) Other prayers of the Appellant are rejected.

17. The Secretariat of this office is directed to refund the amount of Rs.25000 taken as deposit to the Appellant for adjustment in PD arrears.

18. The Representation is disposed of in terms of this order.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

