

C A No. Applied for
Complaint No. 585/2024

In the matter of:

Gautam Kapoor & Sidharth KapoorComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. P.K. Agrawal, Member (Legal)
3. Mr. S.R. Khan, Member (Technical)
4. Mr. H.S. Sohal, (Member)

Appearance:

1. Mr. Neeraj Kumar, Counsel of the complainant
2. Mr. Prashant Sharma, Mr. R.S. Bisht, Ms. Chhavi Rani & Mr. Akshat Aggarwal, On behalf of BYPL

ORDER

Date of Hearing: 03rd April, 2025

Date of Order: 07th April, 2025

Order Pronounced By:- Mr. P.K. Agrawal, Member (Legal)

1. The brief fact of the case giving rise to this grievance is that the complainant applied for new electricity connection at premises no. 138, UGF, Balaji Market, Pul Mithai, Teliwara, Delhi-110006, vide request no. 8007113776. The application of complainant was rejected by Opposite Party (OP) BYPL on the pretext of requirement of fire safety clearance as NX connection is applied in G+5 building and requirement of ESS space as the total plot area is 500 sq. yards and so cumulative built up area is more than 2000 sq yards.

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2. The respondent in reply briefly stated that the present complaint has been filed by the complainant seeking new electricity connection for non-domestic purpose for a load of 1 KW at property bearing no. H.No. 138, Upper Ground Floor, Balaji Market, Pul Mithai, Teliwara, Delhi-110006. Reply further stated that during inspection made by the respondent, it was found that building structure where electricity connection is sought by the complainant is Ground + 4 floors over it including one mezzanine floor. The said building is used for business purposes; hence fire safety clearance certificate is mandatory to provide the new electricity connection.

It is also mentioned in reply that enforcement dues amounting to Rs. 1,32,535/- are also payable upon the building where electricity connection has been sought by the complainant.

3. In response to the reply the complainant filed rejoinder stating therein that already 14 connections have been released in the subject property on the basis of Architect Certificate. Rejoinder also stated that OP recently issued connection on 04.10.2023 in name of Harsh Panjwani on the third floor of the subject premises. The complainant also submitted two orders of the Forum citing that in those orders the Forum has directed the OP to release the new connections under commercial category in the business buildings.

4. Heard both the parties and perused the record.

5. From the narration of facts and material placed before us we find that complainant applied for new electricity connections which OP rejected on grounds of building structure is G+4 floors including mezzanine floor making height more than 15 meters, requirement of fire clearance

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certificate, ESS space required as building is more than 500 sqm and total cumulative built up area of the building is more than 2000 sqm and there are enforcement dues amounting to Rs. 1,32,535/- pending against the applied building.

6. We have gone through the submissions made by both the parties. From the narration of facts and material placed before us we find that the height of the building is an issue which is covered under building by-laws under the jurisdiction of MCD which controls the building activities under DMC Act 1957. MCD collects the NOC or clearance from all outside agencies before it sanctions the building plan.

DERC had clarified the issue regarding height of the building by its circular letter no. F.17 (85)/Engg./DERC/2016-17/5409/487 dated 31.05.2019. In para 2 of this letter DERC had noted submission of Discom's that "DISCOMs have stated that they insist upon fire clearance certificate from the applicant for release of electricity connection based on the application format prescribed by DERC which inter alia states that in case the total height of the building is more than 15 meters, fire clearance certificate has to be obtained by the applicant and is available."

Again on 15.04.2021, DERC issued Schedule of Charges and the Procedure (Sixth Amendment) Order, 2021, reiterating the following:

- (3) In case of residential buildings, for release of electricity connection the Distribution Licensee shall not insist for Fire Clearance Certificate for the residential building having height upto 15 meters without stilt parking and upto 17.5 meters with stilt parking:

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4(1) In case the total height of such building is more than 15 meters without stilt parking and more than 17.5 meters with stilt parking, the distribution licensee shall:

(i) release the electricity connection in the dwelling units which are within the height of 15 meters without stilt parking and within the height of 17.5 meters with stilt parking of the building, without insisting for Fire Clearance Certificate:

(ii) in the dwelling units which are above the height of 15 meters without stilt parking and which are above the height of 17.5 meters with stilt parking of the building, the electricity connection shall not be provided unless the fire clearance certificate has been obtained:

Provided that in case such dwelling units above 15 meters without stilt parking and above 17.5 meters with stilt parking of the building indulge in unauthorized connection from the system of licensee or from the live connection of any other consumer, the licensee may initiate an action as per provisions of Section 126, Section 135, Section 138 or any other section as may be applicable of the Electricity Act, 2003 and the electricity connection of such consumer who has provided the supply unauthorisedly, shall be disconnected immediately;

4(2) The Distribution Licensee shall inspect such premises periodically.

In view of the aforesaid there should not be any ground of misunderstanding with regard to the height of the building and OP should scrupulously follow the regulations laid down by DERC. However OP has submitted that new electricity connection for NX purpose cannot be issued to a building having ground + 5 floors in view of Rule 27 of Delhi Fire Services Rules 2010, which stipulates as follow:-

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27. Classes of occupancies likely to cause a risk of fire. Occupancies for the purposes of sub-section (1) of section 25 of the Act shall be construed to likely cause a risk of fire, namely:-

(1) Pandal having seating capacity more than 50 persons or covered area more than 50 square meters.

(2) Residential buildings (other than hotels and guest houses) having height more than 15 meters or having ground plus four upper stories including mezzanine floor.

(3) Hotels and guest houses having height more than 12 meters having ground plus three upper stories including mezzanine floor.

(4) Educational buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.

(5) Institutional buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.

(6) All Assembly buildings.

(7) Business buildings having height more than 15 meters or having ground plus four upper stories including mezzanine floor.

(8) Mercantile buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.

(9) Industrial buildings having covered area on all floors more than 250 square meters.

(10) Storage buildings having covered area on all floors more than 250 square meters.

(11) All Hazardous buildings having covered area on all floors more than 100 square meters. (12) Underground Structures.

7. In view of the above deliberations and Regulations, we are of the considered opinion that the building structure where the new connection has been applied for by the complainant consists of ground mezzanine+ four floors over it, making height of the building more than 9 meters which as per above stated DFS Rules is a Mercantile building and requires fire clearance certificate.


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
8. Regarding second objection of OP, ESS space, it can be seen that this building is old; most of the connections were given before 2017. OP has not submitted any DERC Regulation which was applicable at the time of construction of this building which required the provision of ESS. Since all other floors have been given electricity connection without requiring the owners of the floor to provide ESS, we have to apply the rule of equality in the present case also. This disposes of objection of OP regarding ESS Space.

9. Regarding the objection of enforcement dues OP has produced an old bill dated 14.09.2007 against Sh. Raj Kumar Chaudhary with the address 138 ,FFPul, Mithai, Qutub Road, Delhi-110006. Even if we presume that this bill applies to the building in present case (ignoring the spelling differences between the applicant's supply address and DT bill address), the OP has not brought out how and why this DT bill of 14.09.2007 is payable by the complainant. According to the sale deed produced by the applicant there are four floors and according to inspection report of the OP there are G+5 structure, and the applicant has asked the connection at UGF. However, the DT bill dated 14.09.2007 does not specify the exact floor in the building to which it pertains. This building is quite old and in sale deed it has been mentioned that Sh. Gurubachan Singh acquired it from Chaudhary Raj Singh on 10.02.1971 on the basis of a gift deed.

If the DT bill related to GF of the building, OP has not submitted the details about its efforts to collect the amount from the actual defaulter nor details of pro-rata collection from the other floor owners. There is no evidence on record produced by the OP as to why it was sleeping for the last 17 years on the pending dues and how it released connections to other floors of the building. We cannot support the OP for its negligence or knee-jerk actions against the consumers on its whims. 

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It is also very unfortunate, that OP in its reply has only mentioned DERC Sixth amendment which is not applicable in the present case. OP has not mentioned Delhi fire Service Rules which are applicable in this case.

The complainant has filed two orders of the Forum which are not applicable in the present case. Both the cases are entirely different from the present case.

ORDER

The complaint is partially allowed. The complainant is directed to provide Fire clearance certificate for grant of new electricity connection as the building height is more than 9 meters and as per above stated DFS in mercantile buildings the height of the building should not be more than 9 meters but in the present case it is more than 9 meters therefore it is mandatory to file fire certificate. The other two objections of OP has been nullified in the present case.

The parties are hereby informed that instant Order is appealable by the Consumer before the Ombudsman within 30 days of the receipt of the Order.

If the Order is not appealed against within the stipulated time, the same shall be deemed to have attained finally.

Any contravention of these Orders is punishable under Section 142 of the Electricity Act 2003.

(H.S. SOHAL)
MEMBER

(P.K. AGRAWAL)
MEMBER (LEGAL)

(S.R. KHAN)
MEMBER (TECH.)

(P.K. SINGH)
CHAIRMAN

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