

C A No. Applied For
Complaint No. 219/2024

In the matter of:

Vijay Pal SinghComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat Ahmed Alvi, Member (CRM)
3. Mr. S.R. Khan, Member (Technical)
4. Mr. H.S. Sohal, Member

Appearance:

1. Mr. Rajan Lal, Counsel of the complainant alongwith complainant
2. Ms. Ritu Gupta, Mr. R.S Bisht & Mr. Akshat Aggarwal, on behalf of respondent.

ORDER

Date of Hearing: 24th October, 2024
Date of Order: 04th November, 2024

Order Pronounced By:- Mr. Nishat A Alvi, Member (CRM)

1. As per the complainant, the complainant has applied for new domestic connection at premises no. C-52, Gokalpuri, Delhi-110094, vide request no. ONKWR2712230675. This request has been declined by OP as NOC of the owner in favour of complainant and ID, as required, could not be provided by the complainant.

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2. In reply to the complaint, OP states that the application of the complainant was rejected at the initial stage itself as the complainant failed to submit ownership/occupancy documents as per requirement of supply code. Reply reproduced concerned Regulation 10 of DERC (Supply Code and Performance Standards) Regulations 2017, thereby showing that proofs of identity and ownership/occupancy are must for getting new connection. But as the document of ownership, placed on record, is in the name of one Sh. Ram Parvesh, who seems to be original allottee of the subject plot, the complainant was asked to provide ID proof and NOC from said Ram Parvesh that too complainant failed to submit. Reply also states the complainant claimed that both said Ram Parvesh and his father-the cousins have since been expired leaving the complainant as sole heir of said Ram Parvesh which is not acceptable as the complainant could not even submit death certificate of Sh. Ram Parvesh. As per reply, complainant claims that he is living in the said premises since 2003, while existing connection therein is in the name of one Neel Kamal. Earlier also there was another connection vide CA no. 101462167 in the name of Amit Kumar Aggarwal s/o Neel Kamal. That connection stands removed on account of outstanding dues Rs. 3832/-. Going through K.No. file of this connection it is revealed that Mr. Neel Kamal was GPA holder of said Ram Parvesh, further stating that said Neel Kamal has also lodged a complaint of burnt meter therein as GPA holders of said Ram Parvesh. This K.No. file also comprises of a ration card of said Ram Parvesh: This ration card shows that Ram Parvesh had a wife, daughter and son. Thus complainants can't claim to be his sole legal heir.

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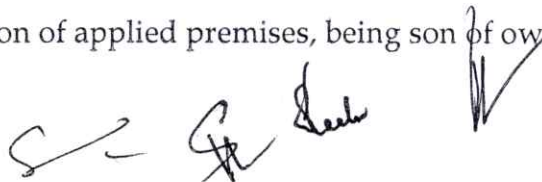
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As per reply premises consists of G+2 and ½ floor with one room over second floor further stating that applied floor is second floor. Second floor is found occupied while ground and 1st floors are found locked. Besides as ~~per~~ complainant himself states there is a property dispute on the subject premises.

3. In rejoinder to this reply, reiterating contents of complaint, complainant denies OP's contention that consumer of earlier connection was GPA holder of Sh. Ram Parvesh as OP could not produce, such GPA in support of this claim, before this Forum. Rejoinder also states that complainant has already furnished documents in his favour i.e. possession slip, Driving license, Voter I.D. Card, Aadhar Card, Bank Passbook, letter from MLA.
4. In support of their contentions, the complainant alongwith his complaint placed on record DUSIB letter dated 03.04.2023, Aadhar card and Voter I Card, MLA letter, possession letter issued by DDA, his passbook, Aadhar of his wife, passbook and Aadhar of his son, suit for declaration filed by complainant and eviction petition file by one Neel Kamal along with OP's certificate confirming complainant's possession on applied premises. On the other hand OP filed bills of connections in the names of Neel Kamal and Amit, site visit report, photos of site and K. No. file of connection referred.
5. Heard and perused the record.
6. Prior to going through the legality, it is necessary to see facts of the case. Complainant says that he, with consent of original allottee, got possession of applied premises, being son of owner's brother.

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Later on, owner left home town in 2005 leaving the possession along with his ownership documents with the complainant, as his only L.R., by way of oral gift. There he died in 2005 itself. Not relying the complainant's version of getting ownership of applied site as an heir, OP required NOC from original allottee in favour of complainant, which complainant failed to, and even death certificate of original allottee could not be produced by the complainant. OP says that complainant has not fulfilled requirements of Regulation 10 of DERC (Supply Code and Performance Standards) Regulations 2017, hence not entitled for new connection. We perused Regulation which states as under:-

CHAPTER - III NEW AND EXISTING CONNECTIONS

10. New and Existing Connections:-

(1) General:-

(v) On the request of applicant, an independent electric connection shall be given to the owner/lawful occupant on each floor of the premises.

Clause (v) of sub-regulation 1 thereof provides that only two person are qualified to claim connection in respect of a premises and either the owner or lawful occupant thereof.

The material on record shows that there being wife and children of original allottee complainant's version of only L.R. can't be relied upon. There is also no evidence in support of complainant's contention that he got the premises by way of oral gift. Consequently the complainant can't be considered to be the owner of applied premises.

Now the only ground to consider complainant's claim for connection remains as to whether he is lawful occupant of the premises or not. Sub-rule (k) of Rule (2) of Electricity (Rights of consumers) Rules 2020 defined the term occupier- "means the owner, tenant or person in occupation of the premises where electricity is used or proposed to be used." Further Hon'ble Supreme Court of India in Industrial Suppliers (P) Ltd. Vs UOI AIR 1980 SC 1858 has held that in the legal sense an occupier is a person in actual possession.

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Further, lawful occupier has been dealt with by Hon'ble High Court of Calcutta in Abhimanyu Mazumdar Vs Superintending Engineer & Anr. AIR 2011 Calcutta 64, holding "Electricity Act (36 of 2003), S 43, 176, 67-works of License Rules (2006) Rule 2 (6), 3-Electricity Supply -'lawful occupier of premises for the purpose of -means actual occupier in settled possession-person, in settled possession of property be it trespasser, unauthorized encroacher, squatter of any premises, can apply for supply of electricity without consent of owner, is entitled to get electricity and enjoy same until he is evicted by due process of law".

As per all these provisions of law and rulings firstly we have to see that a premise in which electricity is proposed to be used is under occupation of the applicant or not.

Secondly, as to whether such occupant is in actual and settled possession or not so that he can be said to complete the requirement of lawful possession. However, it does not matter as to the occupier is a trespasser or unauthorized encroacher, until evicted by due process of law.

Now the only thing we have to determine is as to whether complainant is in actual and settled possession, or not. The means of such possession is not material.

Regulation 10(3) provides for proofs of ownership/Occupancy as

(3) Proof of ownership or occupancy of the premises:- Any of the following documents shall be accepted as the proof of ownership or occupancy of premises:-

(i) certified copy of title deed;

(ii) certified copy of registered conveyance deed;

(iii) General Power of Attorney (GPA);

(iv) allotment letter/possession letter;

(v) valid lease agreement alongwith undertaking that the lease agreement has been signed by the owner or his authorized representative;

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(vi) rent receipt not earlier than 3 (three) months alongwith undertaking that the rent receipt has been signed by the owner or his authorized representative;

(vii) mutation certificate issued by a Government body such as Local Revenue Authorities or Municipal Corporation or land owning agencies like DDA/L&DO;

(viii) sub-division agreement;

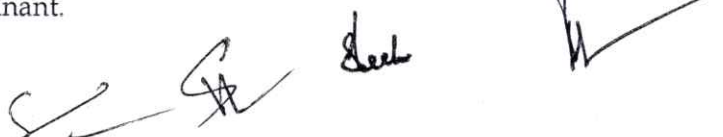
(ix) For bonafide consumers residing in JJ clusters or in other areas with no specific municipal address, the licensee may accept either ration card or electoral identity card mandatorily having the same address as a proof of occupancy of the premises.

As per this sub-regulation for proving occupancy, lease/rent agreement and for residents of JJ cluster Ration Card or Voter I card are required.

In this respect we find on record copies of complainant's Aadhar Card, photo identity card, ration card, passbook. These documents though beside identity also show the applied premises as proof of complainant's address but Rule (9)(2) of Electricity (Rights of Consumers) Rules 2020 provides that , there should be some other proof of possession than these. For this purpose complainant has placed on record DUSIB letter dated 03.04.2023, letter of Local MLA dated 25.12.2023 and a certificate of OP itself certifying that complainant is in actual possession of the premises. This fact of possession is also not specifically denied by the OP either in its reply or in its site visit report. The visit report show that applied floor is occupied and complainant was present at site on its visit there, who told that there is a property dispute. Photographs placed on record by OP also verify complainant's presence at applied premises on its visit.

On the basis of above said findings we may conclude that aforesaid requirements of lawful occupant have been complied with by the complainant.

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Regarding property dispute perusal of copy of civil suit as well as eviction petition shows that, the dispute relates only to 1st floor and not 2nd floor of the applied premises and it has no concern with the 2nd floor/applied premises.

Regarding existing connections, in the name of Neel Kamal, visit report as well as bill do not specify the floor thereof but going through the order in eviction petition, we find that Neel Kamal claims the first floor of the subject premises. Thus connection in his name certainly be on 1st floor and not on second floor.

On the basis of aforesaid findings we are of the considered view that complainant is lawful occupant of applied premises at 2nd floor. There is no meter already existing on this floor. The court dispute has no concern whatsoever with the 2nd floor of subject premises. There is no requirement of NOC from original allottee-since deceased. Therefore, the rejection of complainant's application vide request no. ONKWR2712230675 on the aforesaid grounds is not justified. As such complainant is very much entitled for the connection applied for.

ORDER

Complaint is allowed. OP is directed to release the electricity connection applied for vide request no. ONKWR2712230675 on 2nd floor of premises no. C-52, Gokalpuri, Delhi-110094 after getting all the commercial formalities completed from the complainant.

No order as to cost.

This Order shall be complied with within 21 days of the receipt of the certified copy or from the date it is uploaded on the Website of the Forum; whichever is earlier.

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

If the Orders are not appealed against within the stipulated time ^{and} ~~or~~ no interim ^{desk} stay thereon has been granted by the Ombudsman, the same shall be deemed to have attained finality.

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


(H.S. SOHAL)
MEMBER


(NISHAT A ALVI)
MEMBER (CRM)


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


(P.K. SINGH)
CHAIRMAN

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