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Consumer Grievance Redressal Forum

FOR BSES YAMUNA POWER LIMITED

(Constituted under section 42 (5) of Indian Electricity Act. 2003)

Sub-StationBuilding BSES (YPL) Regd. Office Karkardooma,

Shahdara, Delhi-110032

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SECY/CHN 015/08NKS

C A No. Applied for
Complaint No. 28/2020

In the matter of:

Satya Narain GuptaComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. Arun P Singh (Chairman)
2. Mrs. Vinay Singh, Member (Legal)
3. Dr. Harshali Kaur, Member (CRM)

Appearance:

1. Mr. Nishikant Ray, Counsel for the complainant
2. Mr. Imran Siddiqi & Mr. B.B. Sharma, on behalf of the respondent

ORDER

Date of Hearing: 23rd September, 2020

Date of Order: 25th September, 2020

Order Pronounced by:- Mrs. Vinay Singh, Member (Legal)

Briefly stated facts of the case are the complainant applied for new connections but the respondent company did not release his connections.

He further added that he applied for new connections at F-308, 4th floor, Gali No. 7, Pandav Nagar, Delhi-110091 and said building is old and constructed upto ground floor till fourth floor. It was also his submission that there are three flats on the fourth floor and he is owner of all the flats on 4th floor and there is car parking at the ground floor of the building and also five small shops.

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Complainant also submitted that electricity connection is there in all flats and shops of the building except his flats. He applied for new connection on 27.11.2019 bearing application no. 8004228110, 8004229797 and 8004229799 and the said building has height below 15 meter from each side. But the respondent did not release the new connections on the pretext of building height more than 15 meters and fire clearance certificate is required. Therefore, he requested the Forum to direct the respondent for release of new connections at the earliest.

Notices were issued to both the parties to appear before the Forum on 13.03.2020, but due to Covid 19, Forum was closed and hearing was conducted on 07.08.2020 through video-conferencing.

The respondent company submitted their reply stating therein that the complainant applied for new connections vide request no. 8004228110, 8004229797 and 8004229799 on 27.11.2019 on the fourth floor of F-308, Block-F, Pandav Nagar, Near Park, Delhi-110091. Site was inspected and it was found that the height of the building is 16.10 meters and building is built upto ground+4 floors. Moreover there are shops on the ground floor instead of stilt parking. On ground of site inspection, deficiency letter was issued to the complainant with reason that' building height more than 15 meters w/o stilt parking alongwith NX activity at ground floor of the premises : As per the DERC guidelines Fire Clearance Certificate is required".

Respondent further added that the benefit of relaxation given by DERC vide its notification dated 31.05.2019 cannot be given to the complainant. In the notification DERC clarified about the provision of Clause 4.4.3 (A) of MPD2021 which are as follows:

Maximum height of the building shall be 15 m in plots without stilt parking and 17.5 m in plots with stilt parking.

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It was also submitted that in view of DERC guidelines, respondent rejected the complainant's application for new connection.

It is pertinent to mention here that during course of hearing both the parties were directed to conduct a joint inspection.

Joint inspection was done on 11.08.2020 and the respondent submitted the site visit report which is narrated as under:-

- Grandson of complainant was at site.
- Building height of the premises is 16.15 meter and it is G+4.
- 7 (seven) shops are found at GF along with parking in some portion of the premises.

On hearing dated 21.08.2020, respondent was directed to file DDA/MCD rules and regulations regarding stilt parking. Complainant was also directed to file architect map of the building regarding height of the building.

The complainant filed architect map on 04.09.2020. Forum again directed the complainant to file amended architect map in which the height of the building and details regarding stilt parking should be mentioned but the complainant failed to file afresh architect map as per the Forum's directions.

Matter was finally heard on 23.09.2020 when arguments of both the parties were heard and matter was reserved for orders.

The issue in the present complaint is whether the connections can be granted to the complainant or not in the present premises.

We have gone through all the facts of the case that complainant has filed the architect map which shows there are shops in the front of the building, the

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drive way and stilt parking are behind the shops. The stilt parking is not connected with the main street/gali which is the essential requirement of DDA bye-laws and the complainant has also not mentioned the height of the building in the architect map. As per the joint inspection report the height of the building is 16.15 meter from ground floor+4.

In the High Court of Delhi in the matter of Vikas Singh Vs. Lieutenant Governor and Others in W.P. (c) 1476/2014 date of decision 20.01.2016, which is reproduced as under:-

As per Rule 27 (2) of the Delhi Fire Services Rules, 2010 on the ground of the same being not in consonance with the amendment vide Notification dated 23.09.2013 of the Master Plan for Delhi (MPD)-2021.

The petition came up first before this Court on 07th March 2014, when the counsel for the respondents No. 1 to 3 i.e. Lieutenant Governor of Delhi, Govt of NCT of Delhi (GNCTD) and Director, Delhi Fire Services (DFS), GNCTD appearing on advance notice was directed to file an affidavit indicating the position with regard to fire safety clearance of buildings upto 15 metres in height and beyond 15 metres in height. It was further directed that the said affidavit shall also indicate, as to whether there is need for changing the cap of 15 metres as stipulated in Rule 27 (2) supra, on account of change in the Master Plan whereby the maximum height for residential buildings with stilt parking has been increased to 17.5 metres from the erstwhile limit of 15 metres.

According to Delhi Development Act 1957, bye-laws 2.58 whereof defines "Parking Space" as an area enclosed or unenclosed, covered or open, sufficient in size to park vehicles, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of the vehicles.

Appendix J whereof containing "Relevant Extracts from MPD-2021 regarding Development Control Regulations" provides the maximum height of constructions of residential plotted development, of 15 metres and further

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provides that if the building is constructed with stilt area of non-habitable height (less than 2.4 metres), used for parking, such stilt area shall not be included in FAR but would be counted towards the height of the building.

Bye-laws 6.2.4.1 of the Building bye-laws....has demonstrated that the building plan for such multi-storyed/special buildings has to show inter alia the location and size of fire lift, smoke exhauster system, access to fire appliances/vehicles with details of vehicular turning circle and clear motorable access way around the building etc.

Bye-laws (vi) (iii) that the Section 32 thereof requires only the "multi-storyed buildings" to be governed by the provisions for the fire prevention and fire safety measures stipulated therein.

As per Delhi Fire Services, laws

7. (D) that from fire ground operation point of view, the building beyond 15 metres in height irrespective of type of occupancy, pose different challenges in rescue and fire fighting operations; floors above 15 metres are beyond the reach of the non-self supported ladders (portable manual ladders) and require operation of hydraulic platforms (aerial ladders) for fire-fighting and rescue purposes necessitating 6 metres motorable road around the building.

As per Master Plan Delhi 2021 provision 4.4.3(A) (iii), it is clear that buildings taller than 15 metres are not exempt from seeking clearance from Fire Department; further, as the buildings have to comply with Part IV Fire Protection of NBC, as stipulated in Building bye-laws 17.1, it is clear that MPD-2021 provisions read with building bye-law provisions do not exempt the buildings from the mandatory requirements of setbacks, access etc.

(v) Laws and NBC, by not considering residential buildings upto 17.5 metres with stilt" as high rise buildings", such buildings are nowhere exempted from the mandatory fire protection requirements related to the setbacks, access, alternate stairs etc:

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(vi) that the safety of human life is paramount and all the provision regarding development control norms and other requirements for buildings should be followed invariably;

Similarly, in the **Howrah Municipal Corporation Vs Ganges Rope Co. Ltd. (2004) I SCC 663**, it was held that the considerations of regulatory provisions for construction activities are public interest and convenience and on the subject of seeking sanction of construction, no vested right can be claimed by any citizen divorced from public interest or public conveniences.

Division Bench of High Court of Delhi in the matter **Dr. B.L. Wadhera Vs. Govt. of NCT of Delhi (2003) 105 DLT I**, in the context of fire safety to be provided in high rise buildings held that fundamental rights are placed beyond the reach of ordinary legislations and directed the authorities **not to supply essential services unless and until the building is compliant with fire safety norms**. The petition was dismissed by the Hon'ble High Court because it does not cover all the aspects.

DERC notification dated 31.05.2019, which clearly states that, it is clarified that the distribution licensee for release of electricity connection shall not insist for fire clearance certificate for the residential buildings having height upto 15 metres without stilt parking and 17.5 meters with stilt parking. The measurement of the height of the building shall be made in accordance with clause 1.4.16 and 7.19 Unified Building bye-laws for Delhi 2016.

From the above pleas we are of the considered opinion that the height of the building is more than 15 metres and less than 17.5 metres and also have stilt parking on the ground floor, but the ground floor is fully not utilized for parking purpose only, there are six shops also in the front side of the building facing main lane which are used for commercial activities and in-habitant and

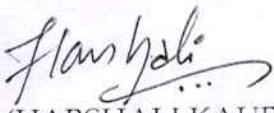
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this is the major hindrance in releasing the connection in the said building. The stilt parking area should be open from all the sides this is as per the fire safety requirements of DFS who is the competent body to attend exigencies in case of fire.

In view of above, the Forum directs the respondent as follows:

1. The respondent is directed to release the connection if the complainant fulfils all the formalities of above stated DDA Bye-laws, Master Plan Delhi 2021, Delhi Fire Services, Regulations and DERC Notification 2019.

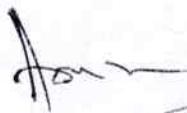
The case is disposed off as above.



(HARSHALI KAUR)
MEMBER (CRM)



(VINAY SINGH)
MEMBER (LAW)



(ARUN P SINGH)
CHAIRMAN