

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM**  
**B.E.S. & T. UNDERTAKING**

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

Ground Floor, Multistoried Annex Building,  
BEST's Colaba Depot  
Colaba, Mumbai - 400 001  
Telephone No. 22799528

**Representation No S-D-370-2018 dtd. 15/10/2018**

Shri Shafique Siddiqui and Shri Iqbal N. Loladia .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri K. Pavithran, Member
2. Dr. M.S. Kamath, Member, CPO

On behalf of the Respondent : 1. Shri R.D. Waikar, DECCD  
2. Shri Y.A. Kapadia, Dy.E. CC(D)

On behalf of the Complainant : 1. Shri Subhan Tahir Khan  
2. Shri Tahir A. Khan

Date of Hearing : 03/12/2018

Date of Order : 07/12/2018

**Judgment by Shri. Vinayak G. Indrale, Chairman**

Shri Shafique Siddiqui and Shri Iqbal N. Loladia, Flat no. 202 & 301 respectively, Aafiyah Heights, Dimtimkar Road, Nagpada, Mumbai - 400 008 have come before the Forum for dispute regarding new electric connections.

**Complainant has submitted in brief as under :**

The complainants have approached to IGR Cell on 07/08/2018 dispute regarding new connection. The complainants have approached to CGRF in schedule 'A' dtd. 07/10/2018 received by CGRF on 11/10/2018 as the complainants were not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on their grievance.

**Respondent, BEST Undertaking in its written statement  
in brief submitted as under :**

- 1.0 Shri Shafique Sidhiqui and Shri Iqbal Noormohamed Loladia came before the Forum regarding their dispute about new electric connection to their flat no. 202, 2<sup>nd</sup> floor and 301, 3<sup>rd</sup> floor respectively in the building / tower under reference.
- 2.0 Shri Shafique Sidhiqui had applied for new electric connection vide application no. 365070 dtd. 30/06/2018 to the flat no. 202 on 2<sup>nd</sup> floor and Shri Iqbal Noormohamed Loladia had applied for new electric connection vide application no. 365071 dtd. 30/06/2018 to the flat no. 301 on 3<sup>rd</sup> floor.
- 3.0 After investigation it was observed that as per submitted EEBP approved plan, 1<sup>st</sup> floor 2<sup>nd</sup> floor, 3<sup>rd</sup> floor, 4<sup>th</sup> floor and 5<sup>th</sup> floor are car parking floor. 8<sup>th</sup> floor, 13<sup>th</sup> floor and 18<sup>th</sup> floor are for refuge purpose. However at present there are eight flats constructed on each parking floor and refuge floors. Also we found 24<sup>th</sup> floor, constructed with 5 flats. As per submitted approved EEBP plan there are very few approved flats on parking floor and refuge floor, whose numbers are very less than what actually constructed, means much more number of flats are not as per submitted EEBP approved plan.
- 4.0 Local citizens and one local news paper named, "Supiya Times" are repeatedly complaining and requesting not to give electric supply for these illegal flats.
- 5.0 The complainant's premises is newly constructed tower. As per EEBP approved plan submitted it is observed that more flats are constructed than approved one. It is not confirmed whether the flats for which electric supply is applied are the same flats which are as per submitted approved EEBP plan or not, or otherwise builder had obtained fresh approval of building / tower plan. Hence, we have asked the complainant to submit registered agreement copy as additional document. The same is not yet submitted by the complainant and not replied till date.

**REASONS**

- 1.0 We have heard the representative Shri Tahir Khan for the complainant and for the Respondent BEST Undertaking Shri R.D. Waikar, DECCD and Shri Y.A. Kapadia, Dy.E. CC(D). Perused the papers.
- 2.0 The representative of the complainant has vehemently submitted that the complainant Shri Shafique Siddiqui and Shri Iqbal N. Loladia have filed requisition bearing no. 365070 and 365071 respectively for electric supply for the flat no. 202 on 2<sup>nd</sup> floor and flat no. 301 on 3<sup>rd</sup> floor in Aafiyah Heights situated at 59, Dimtimkar Marg, Nagpada, Mumbai - 400 008, bearing CTS no. 1463 Byculla along with required

documents as per Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005 and the Respondent BEST Undertaking has not sanctioned the requisition and asked them to file the copy of registered agreement as well as approved EEBP plan. He has further submitted that documents filed along with requisition are sufficient proof to prove their occupation and therefore action of the Respondent BEST Undertaking refusing to give electricity is patently illegal and the Respondent BEST Undertaking is liable to pay penalty as per SOP. Thus, according to the representative of the complainant, there is no need for filing of registered agreement of concerned flats as well as EEBP approved plan. The Respondent BEST Undertaking has submitted that as per EEBP approved plan of Aafiyah Heights 1<sup>st</sup> floor to 5<sup>th</sup> floor is reserved only for parking and only one flat is shown on floor no. 1<sup>st</sup> to 5<sup>th</sup> and the Respondent BEST Undertaking has received eight requisitions each for electric supply to 2<sup>nd</sup> floor to 4<sup>th</sup> floor and seven requisitions for the 5<sup>th</sup> floor of the said building / tower. The Respondent BEST Undertaking has submitted that the building Aafiyah Heights is newly constructed and therefore complainant must have in possession of registered agreement and as per letter issued to them they failed to produce the same. In the absence of registered agreement their possession of so called flat no. 202 & 301 cannot be held as authorized occupation as contemplated u/s 43 of The Electricity Act (E.A.), 2003.

3.0 After hearing the argument of both the parties rival contention in the case is as to whether occupation of so called flat no. 202 and 301 by the complainant amounts to occupy as contemplated u/s 43 of The E.A., 2003 and Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005. In this context we wish to reproduce Section 43 of The E.A., 2003.

Section 43 :

Duty to supply on request :

- 1) *Licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.*

xxx xxx xxx  
xxx xxx xxx

*Explanation - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the Distribution Licensee, along with documents showing payment of necessary charges and other compliances.*

- 2) xxx xxx xxx  
xxx xxx xxx

- 3) xxx xxx xxx

4.0 After going through the Section 43 of The E.A., 2003 it appears that, it casts liability on Distribution Licensee to supply electricity when application is complete in all respect in the appropriate form as required by the Distribution Licensee along with documents and payment of necessary charges and other compliances. Considering the provision of Section 43 of The E.A., 2003, we wish to reproduce ‘Application for Supply’ as per Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

#### Regulation 4.1

*4.1 The applicant shall provide the following information / particulars / documents to the Distribution Licensee while making an application for supply or for additional load, shifting of service, extension of service or restoration of supply:*

*(i) applicant’s name and, whether or not the applicant is the owner of the premises for which supply of electricity is being applied for;*

*(ii) xxx xxx xxx*

*(iii) where applicant is not the owner of the premises, name of owner of premises;*

*(iv) xxx xxx xxx*

*(v) xxx xxx xxx*

*(vi) xxx xxx xxx*

*(vii) additional documents as may be required from the applicant under any statute for the time being in force:*

*Provided that the application form shall provide a list of (a) all major purposes of usage and (b) all such documents along with a reference to specific provision of the statute(s) under which they are required by the Distribution Licensee from the applicant at the time of giving supply of electricity to the premises:*

*Provided further that for consumers falling under the domestic tariff category, a copy of any one of the following documents, namely (i) ration card; (ii) photo-pass; (iii) voter’s card; (iv) passport; (v) documents pertaining to occupation of premises, may be required at the time of processing of the application;*

*(viii) additional details that may be provided by the applicant, at his option, to facilitate the supply of electricity or consumer service by the Distribution Licensee;*

*(ix) xxx xxx xxx*

- 5.0 Having regard to the above said legal provision of Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005, it appears that the applicant / complainant shall provide the information / particular documents as provided under Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. The word “shall” has been used in Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 indicates that the provisions are mandatory. We have perused the application i.e. requisition no. 365070 and 365071 filed by both the complainants for electric supply and it appears that it does not depict the name of the owner as well as in what capacity they are applying for electricity connection. Here, we note that column no. 6, Owner’s name, Building’s name, Societies name are left blank. We do not understand as to why the same columns have not been filled up by the applicants as it was necessary on their part to fill up these columns as per regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005.
- 6.0 After going through the provisions of 4.1(i) of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, it appears that it is obligatory on the part of the applicant / complainant to mention whether he is an owner of the premises or not for which the electric supply is being applied for. As well as per provision of Regulation 4.1 (iii) of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 where the applicant is not owner of the premises, name of the owner of premises has to be mentioned. Both the applications / requisitions are silent on the above aspects.
- 7.0 Having regard to the above said reasons, we have asked the representative as to why the complainants have not filed the registered agreement as the said building / tower is recently developed / constructed. The representative of the complainant has submitted that the developers / builders have not completed the construction of all the floors as per EEBP approved plan and they ran away and now the complainants do not know their whereabouts. This submission of the representative of the complainant to some extent goes to show that the possession of the complainants / applicants on the above said two flats are not as per EEBP approved plan and to some what extent, it appears unauthorized occupation. The Respondent BEST Undertaking has submitted that, as per EEBP approved plan there is only one flat each on 1<sup>st</sup> to 5<sup>th</sup> floor of Aafiyah Heights and rest of the portion is left for parking purpose only. In order to ascertain this fact, we have called EEBP approved plan of 1<sup>st</sup> to 5<sup>th</sup> floor from Planning Dept. to get the details and to administer the justice. As per Regulation 6.17 (a) of MERC (CGRF & EO), Regulations 2006 *the Forum shall be entitled to call for any record and / or require attendance of any person to facilitate and expedite the disposal of the grievance. The Forum shall also be entitled to direct the Distribution Licensee to undertake an inspection.*
- 8.0 After perusal of EEBP approved plan for 1<sup>st</sup> to 5<sup>th</sup> floor, it appears that only one flat is marked on each floor as multi-purpose room and rest of the portion of both the sides have marked as drive way for vehicles and car lift is also marked on both the sides. If this would be the case then certainly it appears that in EEBP approved plan there are

no flat nos. 202 and 301 have been marked. From these circumstances it appears that the developer or the complainants ought to have illegally constructed the rooms in parking place.

- 9.0 We have gone through the written submission filed by the Respondent BEST Undertaking and it reveals that in Aafiyah Heights there are ground + 23 floors and they have in all given 139 electric meters. We have called the record of electricity connection given to these 139 electric meters in Aafiyah Heights and it appears that electric connection has been given to the owners who have applied for the change of name on the basis of registered agreement and it also reveals that rest of the electric connections are still standing in the name of builders / developers.
- 10.0 Now we have to see whether the documents which both the applicants have filed along with requisition are sufficient proof of their lawful occupancy. In Schedule 'A', they have filed a list of documents i.e. rent receipt, ration card, society's NOC, gas receipt, builder's allotment letter but not filed, photo ID. We have cautiously gone through the so called rent receipt which is placed at pg. 12 and 13 and it appears to be maintenance amount paid by the complainants to the society. The receipt dtd. 10/12/2017 is maintenance amount for the period from 01/08/2017 to 31/07/2018 for flat no. 202 and receipt dtd. 02/10/2017 is maintenance amount for the period from 01/08/2017 to 31/07/2019 for flat no. 301. We have asked the representative of the complainants as to whether the above said two receipts can be held as rent receipts, he tried to explain that society is a landlord. This explanation does not seem to be correct one as these receipts only shows the payment of maintenance. The applicants have also filed NOC issued by society for issuing the electricity connection. The complainant Shri Shafique Siddiqui has not filed any ration card but the complainant Shri Iqbal N. Loladia has filed ration card in which flat no. 301, Aafiyah Heights, Dimtimkar Rd., Nagpada is mentioned. The previous address, on ration card of Shri Iqbal N. Loladia is rounded and new address of 301 of Aafiyah Heights is shown. There is no signature of concerned Rationing Officer about the said correction. The complainant Shri Iqbal N. Loladia has also filed gas receipt of Anukool Gas Service dtd. 02/10/2017 and requisition is filed on 30/06/2018. All these documents which complainants have filed, appears to be recent ones.
- 11.0 Considering the above said documents, we have to see whether these documents prove occupancy of concerned flat by the complainants. In other words whether these documents can be held as proof of legal occupancy by the complainants. On this point we have gone through the Section 43 of The The E.A., 2003 and the expression "Occupier" mentioned in Section 43 of The E.A., 2003 does not include an unauthorized occupant of a premises within a class of persons denoted by it. A person who forces himself into any part of the premise owned by someone else i.e. (in this case the flat no. 202 and 301 as shown in parking zone as per EEBP approved plan) cannot be treated as an occupier of such premises for the purpose of Section 43 of The E.A., 2003. For being treated as such he must show that, at some point of time in the past he was put into occupation in question by the owner of premises. In a case where the very entry of an unauthorized occupant into the premises was illegal, there was no

question of such occupant enjoying the same statutory right that an occupier enjoys regarding supply of electricity by the Licensee. Such person is not entitled to claim a legal right to get supply of electricity from Licensee that is under statutory obligation to give supply to an owner or occupier of a premises. If a legal or statutory right of such an occupant is also visualized and enforced by a Court, the provisions of Section 43 of The E.A., 2003 shall suffer an interpretation that is neither meant by them, nor was ever intended by the Legislature. For these reasons we hold that the complainants being an unauthorized occupant of Aafiyah Heights building they are not entitled to get any benefit of section 43 of The E.A., 2003.

- 12.0 On this point we rely upon ruling in between *Samsun Haque Mollick v/s CESC Ltd. reported in AIR 2006, Calcutta 73*. In this case law it has been held that expression "Occupier" in Section 43 of The E.A., 2003 does not include an unauthorized occupant. Having regard to the above said reasons, after cautiously going through the applications and documents filed by the complainant along with requisitions, it appears that the complainants themselves are unable to explain as to in what capacity they claimed to occupy the premises on 2<sup>nd</sup> and 3<sup>rd</sup> floor. The EEBP approved plan which we have received from Planning Dept. goes to show that there is only one multi-purpose room having area of 31.7 sq. mtr and one kitchen having area of 6 sq. mtr. on 2<sup>nd</sup> floor to 5<sup>th</sup> floor and rest of the portion is kept open for car parking. The plan goes to show that there is an arrangement of car lift on 2<sup>nd</sup> to 5<sup>th</sup> floor. Considering the area left for multi-purpose room and one kitchen on each floor i.e. on 2<sup>nd</sup> to 5<sup>th</sup> floor of said building, it appears that probably the said rooms and kitchens might have kept for the occupation of the person who would look after the car parking.
- 13.0 To conclude, this Forum finds that there is cogent evidence placed before this Forum to show that, the so called premises occupied by the complainants are unauthorized as they claimed their possession over the parking placed left for car parking. The complainants have failed to produce documents of title likewise copy of agreement entered into with developers / builders to show their authorized possession. We can draw an adverse inference that as the complainants withhold to produce the above said documents and if they would have produced these documents, it would falsify their case.
- 14.0 In considered view of this Forum as envisaged u/s 43 of The E.A., 2003, the Respondent BEST Undertaking has been under duty to provide electric supply to the owner / occupier of the premises within one month after duly filled application for such supply is received. This Forum further observes that now it is well established principle of law that expression, "Owner / Occupier" explained by the legislature in the said Section 43 of The E.A., 2003 means a lawful owner / occupier. We have already discussed that in EEBP approved plan there is only one multi-purpose room and one small kitchen on 2<sup>nd</sup> to 5<sup>th</sup> floor and rest of the area is left for parking. The complainants have only filed maintenance receipt, NOC from society and zerox copy of ration card in the name of Shri Iqbal N. Loladia. The previous address on the said ration card is struck off and new address is shown but there is no signature on the said correction. The complainant Shri Iqbal N. Loladia has also filed gas invoice dtd.

02/10/2017 showing the address of room no. 301, Aafiyah Heights, Dimtimkar Rd., Nagpada. It appears that these documents being recent one and in our considered view, all the documents filed by the complainants cannot be held as proof of authorized occupation of the rooms for which they have sought connection.

- 15.0 It is not the case of the complainants that they are in settled possession of the premises in the capacity as trespassers so they cannot get the benefit of ruling reported in *AIR 2011 Calcutta 64, Abhimanyu Mazumdar v/s Supdt. Engineer and Anr.* At this juncture we may observe that the complainants have not come to the court with clean hands and suppressed the true facts and prayed for relief u/s 43 of The E.A., 2003. Here, we wish to observe that in present days no one can leave without supply of electricity as right to shelter is a fundamental right under Act 19(1) of the constitution, therefore includes adequate living space, safe and decent structure, clean and decent surrounding, sufficient light, pure air and water, electricity, sanitation and other civic amenities so as to have safe access to his daily avocation.
- 16.0 The representative of the complainants submitted that the complaints are presently getting electric supply from temporary meters provided to developers. If viewed from this angle, it is expected from the complainants to file documents of ownership / occupation to the Respondent BEST Undertaking and apply freshly for electric supply. It appears that if supply is given to unauthorized occupants, there would be every possibility of untoward incidents. The Respondent BEST Undertaking has no enmity with the complainants and being Distribution Licensee is under legal obligation to provide electric supply if application is filed under Regulation 4.1 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 with all legal requirements. In the case on hands, the complainants and others have occupied parking place and violated provisions of law and praying relief of electric supply. In case at hand, if required, permission to occupy is not granted by MCGM, Distribution Licensee is to cut off the temporary supply, but it cannot supply electricity to a building where permission to occupy is never likely to be granted by MCGM authority. This is for the simple reason that the Distribution Licensee acting under the law is not suppose to lend its hand to perpetual illegality.
- 17.0 To conclude, there is no merit in the complaint and therefore deserves to be dismissed. Accordingly we do so.

#### ORDER

- 1.0 The complaint no. S-D-370-2018 dtd. 15/10/2018 stands dismissed.
- 2.0 Copies of this order be given to both the parties.

Sd/---

(Shri K. Pavithran)  
Member

Sd/---

(Dr. M.S. Kamath)  
Member

Sd/--

(Shri V.G. Indrale)  
Chairman