



C A No. Appiled For
Complaint No. 346/2023

In the matter of:

Gautam GoelComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat A Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. H.S. Sohal, Member

Appearance:

1. Mr. Vinod Kumar, Counsel of the complainant
2. Ms. Ritu Gupta, Mr. R.S. Bisht, Ms. Shweta Chaudhary & Ms. Chhavi Rani, On behalf of BYPL

ORDER

Date of Hearing: 22nd November, 2023

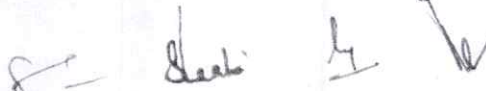
Date of Order: 15th January, 2024

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

1. The complainant Gautam Goel in his complaint submitted that he applied for category change from domestic to non-domestic against CA No. 153877343 vide request no. 8006476573 at 2nd floor of premises no. 1/45, Lalita Park, Laxmi Nagar, Delhi-110092, but respondent rejected his application for category change on pretext of building completion or fire clearance certificate required and commercial building.

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2. OP in its reply briefly submitted that complainant is seeking category change from domestic to non-domestic electricity connection with respect to electricity connection bearing CA No. 153877343 on second floor of premises bearing no. 1/45, Lalita Park, Laxmi Nagar, Delhi-110092. The application bearing no. 8006476573 was registered in the name of Sh. Gautam Goel, HUF, Sh. Varun Singh and Sh. Kant Aharwal as the electricity connection in respect of which change of category is sought is registered in their names. The application was rejected as connection is sought for commercial activity for which height of the building and not the height of the floor is to be taken into consideration. Subject premises consist of Ground + five floors over it. As such height is more than 15 meters, therefore, building completion certificate (BCC) or a fire safety clearance certificate is needed in order to proceed with category change.

OP further added that site was re-visited on 11.09.2023 and it was found that four connections exist in subjected premises. The building at present is having commercial activity at its occupied floors, though existing connections are for domestic purpose. Also, the subject electricity connection was energized on 12.08.2022 under Domestic (residential) category and as now the complainant is seeking change of category from domestic to non-domestic, therefore height of the building is to be considered.

In order to seek category change, the complainant is required to provide fire safety clearance certificate or a Building Completion Certificate.

3. Counsel of the complainant by filing his rejoinder rebutted the contentions of the respondent as averred in their reply and submitted that he is willing to submit Architect Certificate to respondent in order to clear the dimension of the second floor.

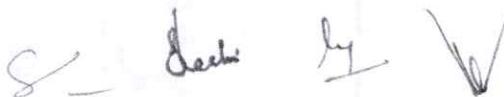
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4. LR of the OP submitted that the complainant has sought change of category within a period of one year from the date of energization of connection itself suggest that previously domestic connection was taken in year 2022 deliberately in order to bypass the Regulation. At present, the modus operandi to get the category change is only to over reach the Regulation as in terms of current Regulation, the complainant could have not gotten the electricity connection for commercial connection at first instance.
5. Heard both the parties and perused the record.
6. We have gone through the submissions made by both the parties and perused the documents placed on record. Counsel of the complainant submitted Architect Certificate issued by MCD approved architect, clearing therein that the height of the building from road level to fourth floor is 15 meters and is in accordance with the building bye laws. OP stated that for category change the complainant has to submit Building Completion Certificate by MCD. Taking the Plea that commercial activity is going on in the building OP states that it cannot grant category change request of the complainant without BCC or Fire Clearance Certificate. To sum up question to be determined is as to which height either of the applied floor or of the entire building is to be taken into account for grant of category change herein. As per OP since the commercial activity is going on in the said building, it is a commercial building. While complainant states that there being other connections of domestic nature mere change of his connection into commercial shall not make the entire building as commercial. This is a mixed use building and in that case he is entitled to benefit of sixth amendment in DERC Regulations of 2017.

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Consequently height of, the applied floor only and not of the entire building should be considered. But OP denied it by stating that benefit of sixth amendment in DERC Regulation of 2017 is not applicable to the complainant's case as all Provisions of commercial building shall apply on the applied premises. Hence for settling this dispute decision on the nature of building is must. In this connection OP failed to place on record any Provision of law/Rule/regulation/notification or its SOP on the basis of which it reached to the conclusion that a mixed use building becomes commercial on the very moment a domestic connection holder applied for change of category into commercial one. On the other hand as per OP's own reply all the four connections in the building are of only domestic nature, but the activity going on is of commercial in nature. This claim of commercial activity, as made by OP, is not supported by independent document/ action or its notice, Prior to filing of present complaint, except its own revisit report. On the basis of aforesaid discussion in our considered opinion OP has failed to prove that the building is a commercial building.

7. In support of his contentions that requirements of commercial buildings are not applicable in his case the complainant has referred reply filed by OP in Vikas Manchanda Vs BSES-YPL in C.G. No. 371/2023, pending for disposal, beside a common order passed by Hon'ble Ombudsman on 25.11.2022 in two Appeals no. 19 and 20 both of 2022 tilted as Ajay Mendiratta and Sanjay Mendiratta respectively against OP.

In the reply referred, complainant quoted Para-4 of the reply as - "that regarding existing connections which were energized in 2022, it is submitted that all were applied for domestic purposes which were granted as per sixth amendment as at that time there was only one non-domestic connection on the ground floor of premises. Regarding two connections bearing CA No. 153984703 & 100896099 later the category was changed from DX to NX on account of misuse as well as on request of the consumer."

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By producing this reply complainant emphasized that first of all even if there was a non-domestic connection in the building, OP did not categorize it as commercial. Not only this there being "commercial connection in the building OP felt no legal/technical hurdle for installation of other connections as domestic, later on energized therein. Regarding order of the Ombudsman aforesaid, complainant by referring it wants, to emphasize that OP no more pressed its earlier objection/deficiency of fire safety clearance certificate and released the connection only on the basis of Architect Certificate.

8. In the fact and circumstances OP miserably failed to clear its stand aforesaid. While, the cases referred to by the complainant reveal that one and the same building has been given both type of connections i.e. domestic as well as commercial connections and it was not considered, while giving commercial connections that the building is a commercial building or not. On the other hand complainant is also not able to convince this Forum that under the sixth amendment aforesaid he is entitled for the change of category applied for, even if the building is considered as residential.

Going through the Schedule of Charges and Procedure (Sixth Amendment) Order, 2021 (date of order 15.04.2021) Clause 2(3) for residential buildings Fire Safety Clearance Certificate is not required in giving electricity connection, if the entire building is upto 15 meters without stilt parking and upto 17.5 meters with stilt parking.

Clause 2(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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Further, clause 2(4) (1) provides:- 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 and, 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:

In the present case the Architect Certificate, placed on record by the complainant, specifically shows that the building in question consists of five floors and the height of 4th floor of the building is upto 15 meters. Meaning thereby the height of the building upto fifth floor shall be more than 15 meters.

Thus, as per complainant's own record building is more than 15 meters in height. For such buildings provision is given in Clause 2(4)(1) aforesaid. It provides two sub-clauses. Out of which Sub-clause(i) is material in this case, which permits release of connection, without insisting Fire Safety Clearance Certificate, in such building, considering height of the dwelling units only and not the entire building.

In this sub-clause, two things are material - (a) that the unit is dwelling, b) that the height of dwelling unit is below 15 meters.

Here in the present case no doubt height of the unit, the complainant is seeking category change on, is below 15 meters, but the unit shall no more remain as dwelling one, the very moment the nature of the unit is converted into commercial. Here admittedly the complainant is seeking commercial connection. After which complainant's ground for taking benefit of ~~aforesaid~~^{but} sixth amendment aforesaid no more remains available to him.

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In the facts and circumstances we are of considered view that even if the building is considered residential, complainant can't be allowed to get the category of a domestic connection changed into commercial unless and until a fire safety clearance certificate is obtained.


ORDER


The complaint is rejected. The request of the complainant for change of residential connection of the complainant vide CA no. 153877343 installed on second floor of premises no. 1/45, Lalita Park, Lami Nagar, Delhi-110092, into commercial cannot be granted unless and until fire safety clearance certificate is submitted to the OP.

Case is disposed off as above.

No order as to the cost. Both the parties should be informed accordingly. File be consigned to Record Room.


(H.S. SOHAL)
MEMBER


(NISHAT A. ALVI)
MEMBER (CRM)


(P.K. AGRAWAL)
MEMBER (LEGAL)


(P.K. SINGH)
CHAIRMAN

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