



C A No. Applied for
Complaint No. 46/2020

In the matter of:

Farhat

.....Complainant

VERSUS

BSES Yamuna Power Limited

.....Respondent

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: 28th September, 2020

Date of Order: 30th September, 2020

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

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

He further added that he is owner of built up property bearing 4581, SF, Front side, Aggarwal Road, 15, Daryaganj, Delhi-110002. He further stated that there are four stories in the said property but there is no electricity connection in the flat of applicant. It is also submitted that already a connection was energized in the said premises in the name of previous owner but the same was disconnected around a year ago.

Harshali

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Complainant also submitted that he applied for new electricity connection on 27.02.2020 vide application no. 8004387557, and the building's height is below 15 metres from each side but the respondent rejected his application for new connection on pretext of building height more than 15 metres and ELCB not installed.

Notices were issued to both the parties to appear before the Forum on 18.09.2020.

The respondent company submitted their reply that the complainant applied for new electricity connection vide request no. 8004387557 dated 27.02.2020 at 4581, SF, Front side, Aggarwal Road 15 Daryaganj, Delhi, Near SDM office, Delhi-110002. The building was inspected and it was found that the height of the building which is Ground+4 and being 18.3 metres and there is no stilt parking at ground floor of the said premises. Accordingly, a deficiency letter was issued to the complainant mentioning the reason that 'building height more than 15 metres without stilt parking: as per 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.

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

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The main issue in the present complaint is whether the connection may be released or not.

We have heard the arguments of both the parties and it came to our knowledge that this building has seven to eight connections except one or two, all connections were energized in 2011 and others in the year 2015 which is prior to the DERC Notification 2017 & 2019.

We have gone through all the facts of the case that as per

Delhi Fire Prevention and Fire Safety Act 1986-Section 3,4,5,6,7,9,10-high rise building-fire safety-safeguards for protection of life and property of residents-failure of Delhi fire Safety Service to take requisite steps and performing statutory functions and duties as required by the Bye-laws-necessary directions, for taking action promptly, diligently and efficiency to see that fire safety measures provided in a building are in accordance with the building bye-laws, Delhi Fire Prevention and Fire Safety Rule 1986, Rule 5, building Bye-laws 2, 6, 7 and Constitution of India 1950, Article 2-to-6.

The minimum standards for fire prevention and fire safety measures specified for buildings or premises shall be as are provided in the building Bye-laws in 1983 or as may be amended from time to time thereafter, relating to the following matters:-

1. Means and access
2. Underground/overhead water static tanks
3. Automatic-sprinklers system
4. First aid Hose Reels
5. Fire extinguishers of ISI certification mark.
6. Compartmentation
7. Automatic fire detection and alarm system/Manually operate electrical fire alarm system.

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8. Public address system
9. Illuminated exit way marking signs
10. Alternate source of electric supply
11. Fire lift with fireman switch
12. Wet riser down corner system

Also, in NDMC vs. Statesman Ltd., MANU/SC/0057/1990: AIR990SC383, the Apex Court had an occasion to consider the fire safety standards to be provided in the buildings. In that case bye-laws No. 16.4.8.1, which was borrowed from Part-IV dealing with "Fire Precautions" in the National Building Code of India, 1983 came to be examined by the Court. The Court pointed out that the National Building code of India, 1983, from which the substance of the bye laws are drawn, indicates that certain broad minimal assurances for fire safety and the better and more reliable measures ought not to be excluded.

The Apex Court in the case of M.C. Mehta Vs. Union of India SC/1123/1997 : (1997)3SCC715 pointed out the precautionary principle. With a view to protect the life of citizens, provisions of fire safety measures have been made compulsory and without the provisions no one can occupy the building where such safety is required to be provided. In the instant case it appears that despite the provision made, the authorities have allowed the builders/developers/organizers to permit the building to be occupied with essential services which ordinarily could not have been provided without occupancy certificate.

Division Bench of High Court of Delhi in the matter Dr. B.L. Wadhwa 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.

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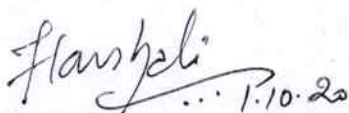
DERC notification dated 31.05.2019, which clearly states that , it is clarified that the distribution licensee for release of electricity connection shall not insist for fire clearance certificate for the residential buildings having height upto 15 metres without stilt parking and 17.5 meters with stilt 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.

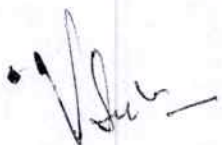
The forum is of the opinion, that the high rise buildings in Delhi either old or new, all the concerned authorities related to essential services shall take necessary action before granting their services to protect the human life and safety.

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 DDA Bye-laws, Master Plan Delhi 2021, Delhi Fire Prevention and Fire Safety Rules and DERC Notification 2019.

The case is disposed off as above.


(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P. SINGH)
CHAIRMAN