

**Before Maharashtra State Electricity Distribution Co. Limited Consumer
Grievances Redressal Forum, Pune Zone, 925,Kasabapeth Building, IInd flr.
Pune-11**

Case No. 13 of 2007

Date: 17/10/07

In the matter of Mr.Jagad Jagdish Ramchandra - Complainant

V/S

**Maharashtra State Electricity Distribution Co.Ltd.
Padmavati Division - Opponent**

Corum	Chair Person	Mr. A.V.Bhalerao
	Member/Secretary,	Mrs. N.D.Joshi,
	Member,	Mr. T.D. Pore

Shri.Jagad Jagdish Ramchandra carries business of construction of building in the name and style Preeti Developers. He filed complaint in the name of Preeti Developers(here in after referred to as complainant). He came with the grievance that he made an application for supply of electricity to each flat in the year 2003. However estimate of it was given to him late in the year 2006. He claimed compensation under Regulation 4.5 of MERC(Electricity supply code and other conditions of supply) Regulation 2005(S.O.P. 2005) @ Rs. 100/- per week for delay and compensation of Rs. 50,000/- for mental agony. He also contended that amount of Rs. 10,000/-, 40,000/-, 8,000/- and 14,000/- were recovered from him illegally. He claimed the relief to modify the bill in to 13 parts as if each flat owner was given supply separately. The complainant before coming to this Forum had approached the Internal Grievance Redressal Cell. Internal Grievance Redressal Cell directed the Maharashtra State Electricity Distribution Co.Ltd. (Opponent for short) to correct the bill for the month of June & July-05 holding that for that period average consumption of electricity was 235

units and not 1456 as billed. Internal Grievance Redressal Cell (IGRC for short) refused to correct the bill for other part holding that there was no defect in the meter. It directed the opponent to deduct the amount of Rs. 28711, which was recovered from the complainant on account of theft of energy committed by him. It however directed the opponent to revise the bill from Sept-2005 onwards applying tariff applicable for residence instead of commercial as was already charged. It also directed opponent to give separate connection to each flat owner after the revised bill was paid.

Not being fully satisfied with the relief given by the IGRC the complainant preferred this complaint.

On behalf of the opponent its Executive Engineer, Padmavati Dn. Pune filed written statement contending that the complainant did not make an application to have supply of electricity separately to each of the twelve flat owners on 17/10/2003. The complainant made an application on 17/10/03 for construction purpose and accordingly he was given supply of electricity for commercial purpose. The complainant was also directed to submit the agreement entered in to by him for development to carryout the work under the scheme of making 15% supervision charges. The complainant submitted an application for having connection to each of flat owner on 20/01/2006 which was forwarded by Executive Engineer, Padmavati Dn. Pune with its letter dt. 06/02/2006 .It was further contended that before the application dt. 20/01/2006 was given, the flat owners who had occupied the flat constructed by complainant, approached the Swargate S/Dn. & informed that the builder had left the work half done and he was not available. They expressed the need to have the electricity and they were willing to get the meter according to the rules. Before giving supply of electricity to each flat it was necessary to clear the arrears of the electricity supplied to that premises for the purpose of construction and therefore premises was visited for the verification of meter on 20/06/2005 and it was found that the seal of the meter was tampered. It was also found that meter was not working. As the seal was tampered penalty was assessed and the bill for Rs. 35,840/- was issued. The same amount was again charged in the bill for the month of Nov-05 as at that time billing section was changed. When this mistake was noticed it was corrected by deducting

the amount in the bill for the month of Aug-2006. In view of the application dt. 22/01/07 given by the complainant to have supply of electricity to each of the twelve flat owners the estimate was to be prepared. However, one, Bhagvan Palav & Sons raised objection for giving such supply through the transformer which was installed in his property at his cost by making application dated 19/02/07

The complainant in fact had already given the possession to flat owners and the said fact was suppressed by him from the opponent.

When the matter was heard by IGRC the consensus was arrived at between them and the same was reduced to writing and signed by both. However, the complainant refused to act on it. The Opponent expressed his willingness to act according to the consensus arrived at before IGRC. The opponent also agreed to make payment of the arrears of the bill and made payment of it in part but taking a somersault refused to complete the arrears and disputed the bill and informed by letter dt. 14/02/07 not to proceed further for giving separate supply of electricity to each of the flat owner till bill was finalized.

As by the decision in this case the actual occupiers - the flat owners who are at present using electricity were to be affected directly, they were served with the notices. Out of them Mrs. Beldar & Mr. Kadam appeared but they did not file their say. They were asked whether there is any term about getting meters in their agreement of sale or sale deed but they couldn't clarify. They were asked to produce their sale deed but they expressed their inability to produce the agreement of sale or sale deed since those were deposited by them with the Bank. They were asked as to who are paying the electricity bill they said that they did not pay anything for the electricity charges. Mr.Kadam admitted that he was receiving the bill for each month but he used to hand over the same to the complainant. He was asked "did he know that the arrears in the bills was running in lakhs" but he kept silence. It was clear that both the flat owners before Forum were reluctant to disclose any thing probably out of the fear that, some action would be taken against them. In the circumstances of the facts involved in the case following points arise for consideration.

- 1) Is complainant entitled to claim compensation for not getting supply of electricity separately to each of the twelve flat owners @ Rs. 100/- per week for the delayed period since 2003 and Rs. 50,000/- for mental agony?
- 2) Is there any illegal recovery of the amount of Rs. 10,000/-, 40,000/-, 8,000/- & 14,000/-?
- 3) Is the complainant entitled to get the bill reassessed for each billing cycle dividing its amount among twelve flat owners as if the electric energy was consumed by them through separate meters?
- 4) Is relief given by IGRC inadequate?

All the above points are answered in negative for the reasons given below.

REASONS

Point No.1- The complainant has claimed compensation for the delayed period contending that he had made an application for having separate supply of electricity to each of the twelve flats on 17/10/03. The complainant is not entitled to be compensated for the period, which is beyond two years from the date of filling of the complaint to this Forum, which is 12/09/07. In view of the provision contained in Regulation 6.6 of MERC (CGRF & E.O.) Regulation 2006 the Forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. If the complainant had made an application on 17/10/03 and within 1 or 3 months he was not given separate connection for 12 flats, the cause of action for him arose in the month of January-04, the said cause of action does not fall within two years next before the date of filling of the complaint which is 12/09/07 to this Forum. The question is whether complainant can claim compensation at least for two years next before the date of filling of this complaint.

The averment made by complainant that he had made an application for supply of electricity to twelve flats for residential purpose is not supported by the documentary evidence. The opponent has produced a copy of the said application. The application

made by the complainant is undated. However it is accompanied with a letter dt. 17/10/03 given by opponent to the complainant. In the said letter it is specifically mentioned that the application made by the complainant was for construction purpose and he was directed to carryout the work under 15% supervision charges. In the application made by the complainant it is specifically mentioned that supply was required for construction and it was for commercial purpose. On the basis of that application, supply to the premises was given on 06/04/2004. The Opponent has produced an application dt. 28/03/07 made by the complainant to it in which prayer was made to the opponent to revise the bill from 2004 onward applying residential tariff instead of commercial as originally he had made application on 17/10/03 for residential purpose. The opponent has also produced the possession letters, which were produced by the complainant along with that letter to show that he had delivered possession to the flat owners in and around Nov. & Dec. 2003.

It is pertinent to note that the supply of electricity for construction was given to the complainant on 06/04/04, however the complainant himself produced with his application dt. 28/03/07 the possession letters showing that even before the supply for construction purpose was given to his premises he delivered possession of the flats to its owners. The complainant did not explain in his complaint how he could complete the construction of the entire building before the supply of electricity for construction purpose was made available to him

The opponent has produced one letter dt. 06/02/06 which is written by Executive Engineer (Padmavati Division) Pune to the Assistant Engineer, Swargage Sub Division in which references have been made to the letters 17/10/03, 26/05/04 & 20/01/06. The application dt. 17/10/03 is produced before us and we have already dealt with it. The said application is not for separate connection for each of the 12 flat owners for residential purpose but the same is for construction purpose. The application dt. 26/05/04 has not been produced either by the complainant or the opponent. Unless the contents of that application are made available for our perusal nothing can be said as to for what purpose it was made.

In spite of the fact that supply of electricity was made available to the complainant only for commercial purpose he gave supply of electricity without meter to each of twelve flat owners, obviously with intention that the flats constructed by him should be sold immediately or attract the customers to buy them otherwise nobody would have purchased the flat which was without supply of electricity. Such use of electricity by the complainant amounts to commercial purpose. In the year 2004, the complainant who carries the business of the construction of building was not entitled to make an application for getting supply of electricity for the flat as at that time he was neither occupier nor owner of the flat. Under section 43 of the Electricity Act-03, the application for supply of electricity is required to be made only by owner or occupier. In the year 04, the complainant was neither the occupier nor the owner of the flats as he had already sold them & delivered the possession and therefore the complainant had no locus standy to make the application of supply of electricity to the flats. The complainant has not given any reason why he did not take any action in spite of the fact that he had made an application on 26/05/04 for getting supply of electricity to each of the twelve flats, he did not receive the separate supply. The latches on his part make his case doubtful that application dt. 26/05/04 was for getting supply of electricity separately to twelve flats. The complainant made an application dt. 20/01/06 for supply of electricity to each of the twelve flats. On receiving that application the estimate was prepared but probably work could not be carried out as the place for laying supply line could not be made available as it was a part of others property. The complainant was given the estimate with sanction order dt. 19/04/06 in which the complainant was directed to make a compliance of the terms at Sr.No.11, 14,16 therein. The complainant has not produced any evidence to show that he made compliance of those terms. Without making compliance of these terms the complainant can't make a grievance that late was caused in giving supply of electricity. Before obtaining supply to each flat in the building constructed by him, it was necessary for him to pay the arrears due, of the supply, which was made available to him for commercial purpose. The consumer personal ledger (CPL) shows that the complainant was irregular in making the payment of the energy consumed and he was in arrears every month. Without clearing the dues the complainant has no right to have supply separately to

twelve flats for residential purpose. For the reasons stated above, the complainant is not entitled to claim the compensation contending that in spite of the fact that he had made application in the year 2003 or even thereafter separate supply of each of the twelve flats for residential purpose was not given. In fact the application to have supply through individual meter to each of the twelve flats as per provision contained in Electricity Act was never made. Awarding compensation to the complainant for mental agony is not within the jurisdiction of this Forum as awarding such compensation amounts to indirect, consequential incidental or exemplary. In view of the regulation 8.2 of MERC (CGRF & E.O.) Regulation 2006 the consumer is not entitled to such compensation.

Point No.2- The complainant contended that the amount of Rs. 10,000/-, 40,000/- 8,000/- 14,000/- were recovered from him illegally. The complainant while making such allegation did not aver how the said recoveries were illegal. The CPL shows that as and when the said amounts were paid they were deducted and accounted for. The complainant at no time made a complaint that his meter was defective. The complainant never made an application to the opponent that his meter was defective and it should be rectified. The complainant has not adduced any evidence to prove that at any time in the past the meter was defective and it showed excessive reading due to which extra amount for the energy consumed was charged in the bill.

Point No.3- The complainant has no right to claim such relief as supply of electricity was given to him for construction purpose and not for residential purpose. He made supply available to twelve flat owners, illegally which in fact amounts to unauthorized use of electricity for which an action is contemplated. It is even difficult to make separate bills for twelve flats, as there is no data as how many units were utilized by each flat owner. From the application made by complainant himself dt. 20/01/06 it is clear that some of the flats /units are for residential purpose while some flats /units are used for running the shops i.e. for commercial purpose. The total bill can not be reassessed in twelve parts as there is no sufficient data and further the flat owners have never come forward to claim such a relief and that there was a single connection only for the purpose of construction.

Point No 4- On going through the relief given by IGRC to the complainant. It is seen that the IGRC has given the relief for which the complainant is not entitled. The IGRC has given the relief of deducting an amount of Rs. 28,711/- which was recovered as a penalty for the theft. In the bill for the month of Sept-05 the amount of 28,771.18 was charged towards penalty for the theft committed by the complainant. There is an assessment order dt. 20/06/05 for the said amount. The CPL shows that the penalty was paid by the complainant. The said penalty was imposed on the basis of verification dt. 20/06/05. It appears that IGRC directed to refund the said penalty on the ground that no criminal case was filed against the complainant and Panchanama was not made at the time of verification and the verification did not bear the signature of the complainant. The IGRC committed an utter mistake in making order of refund of the said penalty of Rs. 28,711/- Section 126 of Electricity Act-2003 lays down the complete provision about the assessment. The assessing officer while on inspection of the premises finds that there is unauthorise use of electricity, he has to provisionally assess to the best of his judgment the electricity charges payable by a such person or any other person benefited by such use. The order of such assessment is to be served upon the person in occupation. The person on whom the notice has been served has a right to file objection against the assessment before the assessing officer. The person on whom the assessment order is served has option to accept the assessment and deposit the amount of assessment. After the assessed amount is deposited the person who has deposited the amount is absolved from any further liability or any action by the authority what so ever. If the person is aggrieved by final order made under section 126 has a right to prefer an application under section 127 of Electricity Act to the appellate authority. In the instant case the complainant did not make any application, he also did not prefer any appeal to the appellate authority. He made payment of the assessed amount of penalty and therefore said order became final . It was not within the competence of the IGRC to refund the amount of penalty on any ground to the complainant .

IGRC has given the relief directing the revision of bill from Sept-05 applying the tariff for residential instead of construction. As already discussed above, the complainant unauthorizedly gave supply of electricity to each of the twelve flat owners

through the construction supply connection for residential purpose. Such use of the electricity by the complainant was made to attract the customers to purchase the flats at higher rates otherwise no one would have thought to purchase a flat which had no supply of electricity. The complainant kept the opponent in dark about his unauthorized activity and had an audacity to claim benefit of using residential tariff. The IGRC ignoring the said aspect gave relief to apply tariff for residential as ultimately the flat owners who were innocent were using it for residential purpose. The IGRC was too much liberal in giving relief to the complainant . At the time of argument on behalf of the opponent Shri.V.R.Katta, D.A. Padmavati Dn. explained how the relief was given in the light of direction given by IGRC applying the tariff for residential as follows.

1- Applying residential tariff bill for Sept-05 to May-07 `			Rs. 1,76,150
2- Correction in the bill July-05 to Nov-05 holding units consumed at Average rate 235 unit per month	(-)		Rs. 17,126.38
		Total	Rs. 1,59,024/-
Amount paid from time to time	(-)		Rs. 46,000/-
		Total	Rs, 1,13,240/-
Refund of penalty	(-)		Rs. 28,711
		Total-	Rs. 84,313/-
The amount paid after decision given by IGRU	(-)		Rs. 40,000/-
		Total-	Rs. 44,313/-
The bill for the energy consumed for July and August-05	(+)		Rs. 15,637/-
		Total	Rs. 59,950/-

The complainant has thus to pay Rs. 59,950/-. The IGRC was too much liberal in giving relief to the complainant. Some of the relief particularly the refund of penalty is without jurisdiction. The complainant is no more entitled to any relief. There is no provision in the regulation empowering the forum to set aside or cancel the relief given by IGRC while deciding the grievance made by the consumer. Had there been such

provision this forum would have set aside and cancelled the relief granted by IGRC. The complainant in spite of getting relief to which in fact he is not entitled to is reluctant to obey it. He had first agreed to it and each of the twelve flat owners gave separate application to have separate meter to each of the flat and payment for getting such separate supply through separate meter has also been made but the complainant who is reluctant to pay the arrears put an obstacle. We therefore pass the following order directing the complainant to adhere to the decision given by IGRC.

ORDER

- 1- Complaint/ Grievance is dismissed.
- 2- Complainant do pay the arrears of electricity bill upto Sept-07 Rs. 59,950/- on or before 31/10/07 failing which the opponent to proceed to disconnect the supply after giving notice under section 56 of the Electricity Act-03
- 3- On complainant making payment as ordered above, the opponent to give supply of electricity to all the flat owners through separate meters and raise the separate bills herein after applying the tariff as per actual use by individual flat/unit owner.

Sign:

Mrs. N.D.Joshi,
Member/Secretary

Mr. T.D.Pore,
Member

Mr. A.V. Bhalerao
Chair Person

Date: