

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Hero Realty Pvt. Ltd.  
Through Shri Ranjan Kohli  
Regd. Office 264, Ground Floor,  
Okhla Industrial Estate, Phase 3,  
New Delhi

Vs

1. The Executive Engineer,  
Electricity Distribution Division,  
Uttarakhand Power Corporation Ltd.  
SIDCUL, Haridwar, Uttarakhand.
2. Shri Suresh Kumar Srivastav  
S/o Late Shri Jagdish Prasad  
Shrivastav, 601, A-19, Haridwar Green,  
Near Novodaya Vidhyalaya, Haridwar,  
Uttarakhand.

Representation No. 36/2019

### **Order**

**Dated: 26.09.2019**

M/s Hero Realty Pvt. Ltd. (hereinafter referred to as petitioner) being aggrieved with the order dated 15.06.2019 of the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) in complaint no. 62/2019 filed before the Said Forum by Shri Suresh Kumar Srivastava vs Executive Engineer, Electricity Distribution Division, UPCL, Haridwar (hereinafter referred to as respondent no. 1 & 2 respectively) has filed this petition before Ombudsman. Although the petitioner was not a party in the said complaint before the Forum but they still feel themselves aggrieved with the aforesaid Forum order and hence filed this appeal.

2. The petitioner have stated that respondent no. 2 (Shri Suresh Kumar Srivastava) had filed complaint no. 62/2019 before the Forum praying for a direct connection for his property which is located within the colony owned and developed by the appellant. It is further stated that as per the bilateral agreement between the respondent no. 2 and the appellant the respondent no. 2 was under obligation to fulfill certain conditions

and was further also not authorized to take direct connection as the appellant had already installed a 1275 KVA connection through which electricity was to be supplied to all the proposed purchasers. Respondent no. 2 with the ulterior motive did not make the appellant a party to the proceedings and with ulterior motive and ill designs availed the impugned judgment by misleading the Forum and hence this appeal has been filed.

3. The appellant has given a number of grounds and objections to the Forum's order such as the impugned order is illegal and unsustainable in the eyes of law, the Forum failed to exercise the jurisdiction vested in it by law, the Forum exceeded the jurisdiction and they exercised jurisdiction with material illegality and irregularity and as such the impugned order is against the facts, law and merits of the case. Further the appellant was necessary party to the proceedings but was not made a party to the same. As such no opportunity was given to them by the Forum to put up their case before them and as such the findings given against the appellant without being provided an opportunity of being heard was against the principle of natural justice also there is nothing on record to reflect that there has been any violation of single point supply rules by the appellant. They have further stated that as ownership of the land from which poles were proposed to be erected and the line was proposed to be laid, belongs to the appellant and any such action will disrupt the entire internal setup of the appellant and as the appellant's are providing underground cable system to all its customers and in such circumstances laying down lines with poles is incomplete contravention of the original plan of the colony. Having made such submissions they have held that order passed by the Forum is not sustainable in the eyes of law and have thus prayed before the Ombudsman as follows:

- a) to set aside ex parte judgment dated 15.06.2019 passed by the Forum in complaint no. 62/2019 of Shri Suresh Kumar Srivastava vs UPCL.
- b) pass any order as deemed fit by the Ombudsman.
- c) award the entire cost of the proceedings.

4. The Forum in their order dated 15.06.2019 in complaint no. 62/2019 have deliberated the case in detail wherein submissions of both parties have been mentioned with regard to complaint of the complainant. The Forum have mentioned that the

complainant after obtaining a NOC from M/s Hero Realty Pvt. Ltd. (builder) have applied for a connection in his flat situated in Haridwar Greens, Roshanabad Housing Society in the year 2018. As per demand of the department he deposited a sum of Rs. 63,500.00 on 09.10.2018 for taking the connection from the department. The department initiated construction of service line and 5 number poles had duly been erected but these 5 poles were uprooted by the employees of the builder. On this the UPCL have stopped further action for giving connection and returned a sum of Rs. 63,500.00 to him and thus the complainant has requested the Forum for getting the electricity connection released to him by UPCL. On the part of the opposite party UPCL the Forum have mentioned that action for giving connection was initiated but on receipt of objections from the developer against giving connection to any of the occupant by UPCL as the developer has taken a single point connection for 1275 KVA for giving connections to occupants of the society. Further action for giving connection was stopped and the money deposited was returned to the complainant and his registration was cancelled.

5. The Forum after going through the documents and hearing both parties have been guided by Government of India, Department of Energy order dated 09.06.2005, abstract of which has been reproduced in their order and as also para 13 (1) of UERC Tariff order have observed that action of UPCL for stopping the action for giving connection to the complainant on the objection of the builder and returning the money deposited by him and cancellation of the registration is baseless. The builder interfering with the release of connection to the complainant by UPCL has acted against his legal right as also their action is in violation with the agreement executed by them with UPCL for single point bulk supply connection and thus the Forum have opined that if the complainant again applies for a connection by UPCL, the release of connection by UPCL in accordance with the said rules/provisions shall be justified and the builder has no right to create any hindrance or obstruction in giving such connection. They have accordingly allowed the complaint.
6. The respondent no. 1 Executive Engineer, EDD, SIDCUL Haridwar has submitted his written statement vide his letter dated 08.08.2019 as follows:

- a) Shri Suresh Kumar Srivastava, Haridwar Green, SIDCUL, has filed complaint no. 62/2019 before the Forum in which there was no third party and as such no party other than Shri Suresh Kumar Srivastava has the right to prefer appeal before Ombudsman.
  - b) As per UERC Regulations the UPCL are duty bound to give connection to any person who so apply for the same. Shri Suresh Kumar Srivastava has applied for a connection in his residence for which necessary charges were got deposited from him. NOC from M/s Hero Realty Pvt. Ltd. for taking such a connection has also been enclosed with the application of Shri Suresh Kumar Srivastava.
  - c) The work of giving connection was also started after depositing charges by the applicant but the builder had raised objections to this and got the work stopped so the connection registration was cancelled and the money deposited by the application was returned to him.
  - d) Shri Suresh Kumar Srivastava has thus filed a complaint before the Forum.
  - e) The Forum after hearing passed order dated 15.06.2019 directing that connection to the applicant be given in accordance with Govt. of India order dated 09.06.2005 as also UERC Tariff provision 13 (1). AS such in accordance with aforesaid Forum order action for giving connection to the petitioner was again initiated and necessary charges were again got deposited from him. But still the work of construction of line is held up due to the objection and hindrance created by the builder.
7. The respondent no. 2 Shri Suresh Kumar Srivastava has submitted his written statement on 29.07.2019. He has stated that objections raised by the appellant, on Forum's judgment dated 15.06.2019, are entirely baseless and wrong for the following reasons:
- a) Forum's order is legally sustainable because the connection was applied directly to UPCL who had accepted the application proceeded to provide the connection. The builder had definitely done the illegal act by uprooting the 5 number poles.
  - b) Objections no. 2, 3, 4 & 5 raised by the appellant are absolutely wrong as Forum's order is in accordance with Govt. of India gazette notification dated

09.06.2005 and therefore the Ombudsman may kindly decide whether the objections are to be overruled or to be sustained.

- c) As regards their objection no. 6 that appellant was not made any party during proceedings is challenged because he had applied to UPCL for obtaining power supply and after the incident of uprooting the poles by employees of the builder UPCL did not take any action. The act of builder interrupting the government work and destroying the government property is a criminal act.
- d) As regards objection 7 appellant's statement is wrong . NOC/consent was received by email dated 12.04.2017 from the builder. A copy of the same has also been enclosed.
- e) Their objection no. 8 that land on which poles were to be erected was builder's property is not correct. Fact is this that M/s Hero Realty Pvt. Ltd. were only the developer and promoter of the housing project "Haridwar Greens" in which he claimed that he is also stake holder. He has claimed that it is his fundamental right whether to opt the power supply from UPCL or any other distributor duly authorized by the Government. The developer has no right either to stop him from taking supply from UPCL neither they can force him to take supply from them.
- f) Regarding their objection no. 9 he has stated that the UPCL did not bring or fix the poles at any such location which may affect the underground cable system.
- g) He has stated that objection no. 11 is most challengeable the appellant in providing power supply to his flat is violating rule 13 (1) of tariff order because the appellant is providing power at higher rate than as defined by UERC.
- h) Objection no. 13 is a matter of investigation and verification. He has also mentioned that the builder are supplying power to some other consumers not situated in the colony developed by builder for which single point connection of 1275KVA has been taken and is earning money by way of charging such consumers on the rate higher than UERC tariff rate. For this reason the appellant is creating trouble to him and not facilitating connection to him by UPCL.

8. Based on the above replies to the objections and in view of the Forum's orders he has requested that the Hon'ble Ombudsman may kindly pass order for direct power supply to him by UPCL and since the appellant had always been creating problem for constructing supply line for giving connection to him by UPCL he has requested that the administrative authorities may kindly be requested to maintain law and order so that there may be no problem in giving connection to him by UPCL.
9. The petitioner has submitted a rejoinder dated 22.08.2019 in reply to written statement of both respondent no. 1 & 2.
- a) They have denied the contents of written statements of both the respondents.
  - b) They have denied and have held false and wrong the contents of para 3 of written statement of respondent no. 2.
  - c) Contents of para 4 of written statement of respondent no. 2 are denied and held false. They have denied that NOC was given by email on 12.01.2017 by the Assistant Manager, Shri Govind Kumar. They have stated that the fact is that Mr. Govind Kumar has not given any NOC and he has also no right and authority to do so.
  - d) Contents of para 5 of ws of respondent no. 2 have been denied. They have held that it is wrong to say that the land on which poles were to be erected were not belonging to the appellant and further it is wrong to say that the builder are only developer and promoters of its housing project "Haridwar Greens" and respondent no. 2 is only the stakeholder. They have also denied that respondent no. 2 has a fundamental right whether to opt the power supply from UPCL or any other distributor. They have also stated that it was wrong to say that the developer has no right to either stop the respondent no. 2 on this point nor can bound him to get the supply from Hero Realty Pvt. Ltd. only.
  - e) They have stated that contents of para 8 of written statement of respondent no. 2 are accepted to the extent that appellant is providing the power supply to respondent no. 2 but it is wrong to say that the appellant has violated any orders of UERC. They have also held it wrong that they are providing power at higher rate.

- f) They have stated that in written statement there is no satisfactory answer to the fact that the impugned order dated 15.06.2019 has been passed behind the back of the appellants.
- g) They have stated that Shri Suresh Kumar Srivastava has leveled various allegations against the appellant without impleading appellant's as a party to the proceedings.
- h) It is stated that the Forum without giving opportunity to the petitioner have concluded petitioner as guilty which is beyond their jurisdiction.
- i) The dispute between Shri Suresh Kumar Srivastava and the petitioner, according to them, is of Civil nature and as such the Forum have gone beyond its jurisdiction in giving findings against the petitioner.
- j) According to them a procedure adopted by respondent no. 1 is against principle of natural justice.
- k) They have stated that the allegations and the evidence produced by the respondent no. 2 cannot be appreciated by the Forum, the same can only be adjudicated by Civil Court.
- l) They have stated that as per the latest practice and procedure being followed in case of group housing scheme it was only when 50% of the total residents apply for individual connection then only the same can be granted (no evidence or regulation to this effect has been adduced by the petitioner).
- m) The finding to the effect that the petitioner has committed the breach of the rights of the respondent no. 2 without petitioner having been given opportunity is illegal and against the principles of natural justice.

Based on above replies the petitioner have prayed that objections filed by the respondents may be dismissed and appeal be allowed.

10. Arguments from all parties were heard on 12.09.2019. Earlier the petitioner has submitted a jointly signed objection by a number of residents of the society. All parties submitted their arguments on the aforesaid date of hearing and respondent no. 2 has also submitted point wise reply to petitioner's rejoinder. Which all are on records and need not be reiterated. Arguments were concluded but petitioner requested time for submission of written arguments which was allowed to be submitted by 16.09.2019. The written arguments have duly been submitted by the

petitioner on 16.09.2019 with a copy to respondent no. 1. This has been taken on record and as submissions in the written argument are more or less repetition or reiteration what they have already submitted in their petition and rejoinder and therefore need not be elaborated here in this order.

11. All records and documents available on file have been carefully perused. Arguments from both parties have been heard relevant provisions in the Act, Tariff Order and Govt. of India order dated 09.06.2005 referred to in Forum order have also been perused. Before the conclusion and observation drawn based on the documents and arguments it is clarified that petitioner's objection that they were not made a party in the complaint before the Forum and as such no opportunity was given to them to contest their case before the said Forum and as such Forum's order is ex parte and not legally maintainable for the reasons mentioned by them in their petition, it would have been in the fitness of things if the petitioner M/s Hero Realty Pvt. Ltd. would have been made a party to the complaint before the Forum but their grievance now stands addressed as they have been given full opportunity here before Ombudsman to submit their case and contest which they have duly done but their allegation that Forum's order was ex parte is not maintainable because the Forum have passed their order after taking into view the contents of the complaint and reply of the opposite party as also relevant legal provisions and as such Forum's order does not suffer from any infirmity, legal or procedural. The respondent no. 1's objection that since petitioner M/s Hero Realty Pvt. Ltd. was not a party in the complaint before the Forum, he cannot prefer the appeal before Ombudsman is not maintainable because they are the party which are affected by Forum's order dated 15.06.2019 and hence they have the right to prefer this appeal before the Ombudsman.
12. In order to arrive at a decision on the petition it would be appropriate to refer the relevant statutory/regulatory or/and any other relevant government orders applicable in the present case. Such provisions are reproduced below:

Section 43 of the Electricity Act, 2003

*"43. Duty to supply on request –[Save as otherwise provided in this Act, every distribution] 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:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission: ...”*

2 Relevant abstract of Government of India, Ministry of Power order dated 09.06.2005

*“2. Supply of electricity at single point by the distribution licensee to a Cooperative Group Housing Society –*

*A distribution licensee shall give supply of electricity for residential purposes on an application by a Cooperative Group Housing Society which owns the premises at a single point for making electricity available to the members of such Society residing in the same premises on such terms and conditions as may be specified by the State Commission:*

*Provided that the provisions of this clause shall not in any way affect the right of a person residing in the housing unit sold or leased by such a Cooperative Group Housing Society to demand supply of electricity directly from the distribution licensee of the area on such terms and conditions as may be specified by the State Commission.”*

3. 13 of UERC Tariff

*“13. Single Point Bulk Supply for Domesitc, Non Domestic and Mixed Load Categories.*

*(i) Single Point Bulk Supply connection shall only be allowed for Sanctioned/Contracted Load above 75 KW with single point metering for further distribution to the end users. However, this shall not restrict the individual owner/occupier from applying for individual connection.*

*(ii) The person who has taken the single point supply shall be responsible for all payments of electricity charges to the Licensee and collection from the end consumer*

*as per tariff prescribed for such consumer. The Licensee shall ensure that tariff being charged from end consumer does not exceed the prescribed tariff for the concerned category of the consumer.*

*(iii) The person who has taken the single point supply shall also be deemed to be an agent of Licensee to undertake distribution of electricity for the premises for which single point supply is given under seventh proviso to section 14 of the Electricity Act, 2003 and distribution licensee shall be responsible for compliance of all provisions of the Act and Rules & Regulations thereunder within such area.*

*iv) Single Point Bulk Supply under “Domestic” shall only be applicable for Residential Colonies/Residential Multistoreyed Buildings including common facilities (Such as Lifts, Common Lighting and Water Pumping System) of such Residential Colonies/Residential Multistoreyed Buildings. In case these Residential Colonies/Residential Multistoreyed Buildings also have some shops or other commercial establishments, the tariff of Mixed Load shall be applicable for such premises.*

*(v) Single Point Bulk Supply Under “Non-Domestic” shall only be applicable for Shopping Complexes/Multiples/Malls.”*

13. In view of above statutory and regulatory provisions it is clearly established that an occupier of a premises (flat in the instant case) in a Housing Society developed by a builder who has taken a single point bulk supply connection for giving individual connections in the said housing complex, as in the instant case, can very well take a connection in his premises directly from the distribution licensee, the UPCL, if he so desires, instead of taking connection from the developer. The Forum’s order dated 15.06.2019 directing the respondent UPCL to give connection to the respondent no. 2 is upheld being consistent with the above provisions and as the respondent no. 2 has already applied again and respondent no. 1 has also got necessary charges deposited from him, the respondent no. 1 are duty bound to give connection to respondent no. 2 and are directed to release connection to respondent no. 2 after constructing necessary line as also directed by the Forum in their order dated 15.06.2019. Further it is also clarified that no NOC from the developer is required for taking such a connection by the occupier of a flat in the housing complex directly from UPCL. It is also clarified

that any obstruction or hindrance if created by the developer in giving connection as aforesaid shall be an illegal act on his part and if any such situation arises, the respondent UPCL may take help from the administration. The petition is dismissed with no costs.

Dated: 26.09.2019

(Subhash Kumar)  
Ombudsman