

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission  
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO 105 OF 2023

In the matter of retrospective recovery towards under billing

Caviana Co-op Hsg. Soc. Ltd.....Appellant  
(Roma Builders Pvt. Ltd.) (Consumer No. 000011961789)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Wagle Estate (MSEDCL) ..... Respondent

Appearances:

Appellant : Vincent D'souza, Representative

Respondent: 1. Satish G. Jadhav, Executive Engineer, Wagle Estate, Thane  
2. Anil P. Maske, Addl. Ex. Engineer, Kolshet Subdivision


**Coram: Vandana Krishna [I.A.S.(Retd.)]**

Date of hearing: 20<sup>th</sup> December 2023

Date of Order : 24<sup>th</sup> January 2024

## ORDER

This Representation was filed on 9<sup>th</sup> October 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 10<sup>th</sup>

  
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August 2023 in Case No 12/2022-23 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum). The Forum by its order dismissed the grievance application.


2. Aggrieved by the order of the Forum, the Appellant has filed this representation. A physical hearing was held on 20<sup>th</sup> December 2023 where the parties were present. Parties were heard at length. The Respondent filed its reply on **25<sup>th</sup> October 2023**. For easy understanding, the Respondent's submissions and arguments are stated first as below:

- (i) The Appellant is a Society with A and B wings, having the following common connections. The details of the Sanctioned Load, date of supply, purpose of each connection as provided by the Respondent is tabulated below:

Table 1


Sr. No.	Consumer No.	Date of Connection	Sanctioned load (KW)	Status	Purpose mentioned in the bill	Consumption Pattern
1	000011963838	30.05.2002	7.5	Live	B Wing Water Pump	2100 to 3300 units per month
2	000011962785	30.05.2002	7.5	Live	A wing Lift	500 to 650 units per month
3	000011963846	30.05.2002	7.5	Live	B wing Lift	1000 to 1350 units per month
4	000011962777	30.05.2002	3.5	PD	A Wing Stair Case	200 to 300 units per month
5	000011962793	30.05.2002	7.5	PD	A wing Water Pump	250 to 350 units per month
6	000011963234	30.05.2002	3.5	PD	B Wing Stair Case	350 to 550 units per month
7	000011961789	30.05.2002	30	PD	Fire Pump	900 to 1000 units per month

- (ii) The supply of the Appellant (Cons. No.000011961789) was **permanently disconnected** in the month of Feb. 2013 as per the Consumer Personal Ledger. During the hearing, it was explained that there is a policy that multiple / unnecessary connections are surrendered or clubbed.

  
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- (iii) The Respondent visited the premises of the Appellant on 18.12.2018 to carry out a routine inspection in the presence of the Appellant, when it was observed that though the supply of the Appellant was permanently disconnected in the month of Feb.2013, the meter of the Appellant was still installed on site, and the Fire Pump as well as two lifts were working on this meter. **This is a case where the meter was installed on site, despite the consumer being permanently disconnected (PD) as per official record.** [Note: There is no explanation why this Fire Pump connection was permanently disconnected and also why the meter was not physically removed when the connection was made P.D.]
- (iv) Fire Pump is a passive load and is generally used only in the case of routine maintenance and occasionally during mock drill for emergencies. Hence, there was negligible consumption on the fire pump motor. However two lifts were also working regularly on this meter. This was a serious irregularity, and the Appellant was indulging in unauthorized use of electricity, as the supply was sanctioned only for fire pump (passive load), but it was used for fire lift which was continuously used for day-to-day movement of the Society Members.
- (v) The above issue created a problem of how to assess the consumed units on this meter, since the display of the meter was found not working. The MRI data of the Meter (Sr. No.44457 of 3 X 100/5 A Capacity of Due Arnics Make) was also not downloaded or available due to limitation of software of Due Arnics. Purchase of this type of meter was also stopped at the Corporate Level of the Respondent. Hence, there was no way to assess the consumed units, other than to assess based on the previous consumption pattern of the two lifts and fire pump together (911 units per month).
- (vi) Accordingly, the Respondent issued a supplementary bill of plain recovery of **Rs.7,45,400/- to the Appellant on 18.01.2019** at the average of 911 units per month for the period of Feb.-13 to Dec.-18 (71 months) for 64,681 units, based on the

  
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previous established average consumption of two lifts. The load of this PD connection was shifted to the existing connection of the Society, when it was observed that the consumption of this consumer number increased by 911 units per month.

- (vii) This supplementary bill was not paid by the Appellant. The Respondent, by its letter dated 04.12.2020, issued a disconnection notice to pay the said outstanding bill within 15 days otherwise the Respondent would be compelled to divert these arrears of the Permanently Disconnected Consumer to the Society's Live Consumer. After diverting these arrears, the Appellant's live connection would also be liable to be disconnected. The Respondent advised the Society to pay this outstanding amount with a personal discussion with the Appellant's Office-Bearers in their premises, to avoid further action in the matter. However, they took some time to discuss this issue with their Society Members.
- (viii) The Respondent filed a recovery case in the Lok Adalat in the year 2021. The Case was scheduled for hearing on 12.03.2022. The Society Members attended the hearing but did not agree to settle the case even though the Respondent was willing to give them special concession to pay only the principal amount.
- (ix) A PD Recovery Drive was arranged in March 2022, and it was conveyed to the Society Officials. The Appellant submitted a cheque (No. 243014 ) amounting to Rs.3,59,035/- dated 26.03.2022, and a cheque (No. 243015) dated 26.04.2022 amounting to Rs.3,59,035/-. The Respondent's office is adjacent to and near the Society. Hence, the authorities of the society normally visit their office frequently. The Respondent took all these visits in good spirit. The cheque was deposited in the bank as per the date on the cheque. However, the Appellant submitted a letter dated 26.04.2022 (received on 27.04.2022) stating that the cheque (No. 243015) should not be put up for encashment. (This was because they had decided to approach the

  
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Forum.) But by then the cheque receipt was already generated and handed over to the Appellant on 26.04.2022, and the clearing of the cheque was under process.

(x) The Appellant filed a grievance in the Forum on 25.04.2022. As per Regulation 6.6 / 7.8 of CGRF & EO Regulations 2006/2020, the Forum is empowered to entertain a grievance which is filed within 2 years from the date of cause of action. **This grievance is time barred, as the cause of action happened in Jan. 2019. The demand of the supplementary bill of Rs. 7,45,400/- was issued to the Appellant on 18.01.2019.**

(xi) The Appellant has referred to the Supreme Court Order dated 10.01.2022 regarding relaxation of the time period for filing petitions due to the Covid-19 pandemic. However, the ratio of the said order is not applicable to this case. The filing of application to the Forum is a simple process, as the Respondent had already provided an online Web Self Service Portal as well as email facility to the consumers for filing of their grievances. In addition, the Appellant frequently visited the MSEDCL Office (which is adjacent to the Society premises) for day-to-day work even during the pandemic period. Hence, there is no justifiable reason for the delay in filing the grievance in the Forum.

(xii) The Forum by its order dated 10.08.2023 has dismissed the grievance application with the following observation.

*“The Forum noted that, the Applicant themselves admitted in their grievance that, the Respondent visited the consumer’s premises and disconnected the all the three existing meters on which two fire lifts ,one fire pumps and staircase lightening for common arrears are operating. There are no outstanding dues on any of the meters which were disconnected. It means that, the Applicant has the knowledge that, there are three meters. However they are paying for the two meters only as the bill for two meters is receiving. The Applicant does not bother to intimate the status of the disputed meter to the Respondent. However, the Applicant had*

  
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*enjoyed the electricity free of cost without knowledge of the Respondent from the disputed meter. The Forum has taken serious note of the same. Moreover, the electricity dues where they are statutory in character under the Act and as per the terms and conditions of supply, therefore, the electricity dues cannot be waived of.”*

- (xiii) This was a case where mutual settlement was sought to be implemented as per oral discussions with the Society. The Respondent has taken a lenient view not to take action for punishment under Section 135 of the Act, wherein the assessed penalty billing has to be done with 1.5 times the tariff rate. The Respondent preferred to bill the society under plain tariff recovery of the assessed units which the Appellant has consumed. The Society is one of the “Custodians” of the meter room of MSEDCL, being registered under the Co-operative Act. Hence, the stand taken by the Society (that the meter installation / removal is the sole responsibility of the Respondent) is an afterthought.
- (xiv) The Respondent referred to Regulation 16 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 which came in force from 25.02.2021 in support of its claim of recovery of arrears of PD consumers.
- (xv) In view of the above, the representation is time barred as per Regulation 6.6/7.8 of CGRF & EO Regulations 2006/2020 and also does not stand on merit. Hence, the Respondent prays that the representation of the Appellant be dismissed, and the order of the Forum be upheld.

3. The Appellant’s submissions and arguments are as below:


- (i) The Appellant is a registered cooperative housing Society Ltd., with one of its connections having residential consumer No.000011961789 from 30.05.2002 for the

  
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common use of fire pump. The details of Sanctioned Load, address, purpose is tabulated in Table 1.


- (ii) The Caviana C.H.S. Ltd. comprises of A Wing and B Wing with 11 and 10 Storeys respectively. The building has 2 lifts each in both the Wings and a common Water Pump is installed. The Respondent has installed Electric Meters for passenger lifts which includes Fire Lift and Water Pump.
- (iii) In the month of March 2011, the Managing Committee noticed that the Meter No. 44457 bearing Consumer No. 000011961789 was faulty, as it was showing the same meter reading for the past several months. Accordingly, the Appellant had addressed a letter dated 10<sup>th</sup> May 2011 to the MSEDCL complaining about the faulty reading of the said Meter for the past two months, with a request to change the defective meter. Since no reply was received from MSEDCL and neither did any Engineer/Technician of MSEDCL visit the Appellant for replacing the said faulty meter, the Appellant sent a few more reminder letters dated 4<sup>th</sup> May 2012, 14<sup>th</sup> July 2012, and 7<sup>th</sup> September 2012 respectively on the said issue. There was no response received from MSEDCL on the complaint registered by the Appellant. *[Note: The Respondent has not denied receiving these letters about faulty meter. However there is no explanation about why this faulty meter was not replaced.]*
- (iv) The Appellant again addressed a letter dated 15<sup>th</sup> October 2012 to the MSEDCL drawing their attention to the above, and further conveyed that unless this issue is resolved, there would be no obligation on the Appellant to make any payments. The Appellant paid all bills of MSEDCL within time up to October 2012.
- (v) The Respondent did not raise any further bills to the Appellant from the month of **November 2012 till December 2018** for the faulty meter No. 44457.
- (vi) The Appellant referred to the Regulation 14.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply code Regulations 2005). It is the responsibility of the

  
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licensee to test the meter periodically and to take further action of replacement of defective meters. The Respondent failed in this duty for which the Appellant cannot be held responsible.


- (vii) **The Appellant vehemently denies that the electricity meter bearing Consumer No. 000011961789 at the Appellant by MSEDCL was permanently disconnected in the month of February 2013.** The meter was live on site, as per the spot inspection report dated 18.12.2018 of MSEDCL.
- (viii) When the Appellant experienced a breakdown in one of the lifts in the month of December 2018, the Appellant contacted the Respondent officials to rectify the issue. On 18.12.2018, the Asst. Engineer, Patlipada Section along with his staff visited the Appellant's premises for inspection. Upon inspection, the Respondent officials identified and resolved the issue concerning the said lift. In the Respondent's Verification Report dated 18.12.2018, duly signed by the Asst. Engineer, Patlipada Section, it was mentioned that "no display was found on the Meter No. 44457 bearing consumer no. 000011961789". Further, it was also mentioned that two fire lifts and one fire pump were found working on the above Meter. The said Verification Report also stated that the Meter was in working condition and that the condition of seal was 'OK' and not tampered with.
- (ix) The Respondent issued a provisional bill dated 18.01.2019 for Rs. 7,45,400/-at the average of 911 units per month for the period of Feb.-13 to Dec.-18 (71 months). **The Appellant disputed the claim raised by the Respondent vide its letter dated 19.03.2019, invoking the bar of limitation under Section 56(2) of the Act and requested the Respondent to raise a revised bill from January 2017.** The Provisional Bill dated 18.1.2019 was contrary to the provisions of Section 56(2) of the Act, and the Appellant also cited a Judgement of the Hon'ble Bombay High Court in support of its above contention.

  
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- (x) The Respondent failed and neglected to respond to the above letter. After a gap of almost 21 months, the, Respondent sent a revised demand notice dated 04.12.2020 to the Appellant demanding payment of Rs.7,18,070/- from the Appellant against the dues of the Consumer No. 000011961789.
- (xi) As per the provisions of Section 56(2) of the Act, the limitation period prescribed therein is mandatory in nature. Further, for recovery of any sum due from any consumer, it is mandatory that the sum due has been shown continuously in the bills as recoverable as arrears of charges for the electricity supplied.
- (xii) The Respondent vide its letter dated 22.02.2022 addressed to the Appellant once again demanded the payment of the provisional bill dated 18.01.2019. *[Note: It is not clear why the Respondent first reduced the bill from Rs.7.45 lakhs to Rs.7.18 lakhs, and why the demand was again increased, if so, to Rs.7.45 lakhs.]*
- (xiii) It is submitted that in reply to the above letter, the Appellant addressed a letter dated 08.03.2022 disputing the demand made by Respondent vide its Provisional Bill dated 18.1.2019. **The Appellant further informed the Respondent of its willingness to pay the amount from January 2017 onwards,** upon receipt of a revised bill from the Respondent in accordance with the provisions of Section 56(2) of the Act and in accordance with the Judgment of the Hon'ble Bombay High Court.
- (xiv) The Appellant received an intimation to attend the Lok Adalat on 12.3.2022 in the said matter. At the Lok Adalat, the Office Bearers of the Appellant Society informed the members of the Lok Adalat as well as the representatives of the Respondent, that the Appellant had still not received any reply from the Respondent to its letter dated 19.03.2019 and that no demand can be raised on a provisional bill. During the hearing, the representative of Respondent had shown a bill dated 28.02.2022 on his mobile phone stating that it was the final bill.
- (xv) The copy of the Final Bill dated 28.02.2022 was provided by Mr. Anil Maske, Additional Executive Engineer, Kolshet Subdivision of the Respondent, when the

  
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Office Bearers of the Appellant had visited the Respondent office on 14.3.2022. The said bill does not show that the amount of Rs. 7,18,070/- as raised in the bill are arrears due from February 2013 onwards.


- (xvi) Mr. Rohit More, Assistant Engineer Patlipada Section had been repeatedly approaching the Appellant to make the payment as a onetime settlement, with a discount of 10%. The representatives of the Respondent also threatened that if the payment was not made then they would disconnect the power supply of all three meters of the Appellant, which would have made the elevators, fire pump, water pump and the lights in the common areas (staircase and lobby) not operational.
- (xvii) On 22.03.2022, the Respondent disconnected all the three existing meters on which the fire lifts, fire pump and water pump are operating, even when there were no outstanding dues payable by the Appellant on any of the said meters. It was only after the Office Bearers of the Appellant spoke to the higher Authorities of MSEDCL, that the Respondent reconnected the meters. The Respondent used coercive methods by threatening to permanently disconnect the three meters in order to compel the Appellant into paying the huge amount of Rs. 7,18,070/- before 31<sup>st</sup> March 2022, as per the final bill dated 28.2.2022, without showing any justification or disclosing any particulars, and moreover in utter violation of the provision of Section 56 (2) of the Act.
- (xviii) It is submitted that the Caviana Building has two wings A and B of 11 storeys and 10 storeys respectively. There are several senior citizens residing in these wings. Had the representatives of the Respondent carried out the threat of disconnecting the three meters, the senior citizens and children would have been compelled to use the staircase. Further, the fire lifts and fire pump not being operational would put the residents to risk in case of any fire and emergency. Also, if the water pump would not have been operational, the residents would have been deprived of water supply which is an essential service. Ultimately, purely under coercion and in order to avoid inconvenience to its residents, the Appellant was compelled to pre-maturely redeem a fixed deposit

  
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from their bank in order to make the payment of Rs. 7,18,070/- to the Respondent. The Appellant, vide its letter dated 26.03.2022 made a payment of Rs. 3,59,035 vide cheque no. 243014, being 50% of the amount.

- (xix) Vide the above letter dated 26.03.2022, the Appellant also provided a postdated cheque no. 243015 dated 26.04.2022 for the balance 50% payment. In this letter, the Appellant informed MSEDCL that the Appellant was in the process of filing a complaint before the Forum under the provisions of the Act for quashing the demand of Rs. 7,18,070/-.
- (xx) The Appellant filed a grievance application in the Forum on 25.04.2022. The Forum by its order dismissed the grievance application. The Forum has erred in rejecting the Appellant's grievance by ignoring the mandatory provisions of the limitation period as prescribed under Section 56 (2) of the the Act, which were in favour of the Appellant.
- (xxi) The Forum has also erred in applying Regulation No. 6.6 regarding limitation which is not mandatory during the pandemic as held by the Bombay High Court in its Judgement dated 8.6.2021 in the case of Maharashtra State Electricity v/s. M/s. Rsr. Mohota Spinning and Weaving. The Forum ought to have realised that the said Regulation 6.6 could not have been made applicable in favour of M.S.E.D.C.L as the demand raised by M.S.E.D.C.L on the Appellant was itself barred by the period of limitation as prescribed under Section 56 (2) of the Act.
- (xxii) The Appellant therefore, prays that
- The impugned provisional bill of Rs. 7,18,070/- dated 18.1.2019, the impugned demand notice dated 4.12.2020 and the impugned Final Bill dated 28.2.2022 be quashed and set aside.
  - The MSEDCL be directed to refund to the Appellant, the amount of Rs. 7,18,070/- paid by the Appellant with interest.


  
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## Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant is a Society having seven common connections which are tabulated in Table 1 at para 2(i). Out of these 7 connections, 3 connections were permanently disconnected, which include the disputed connection (No. 000011961789) which is of the Fire Pump. This connection of Fire Pump was disconnected in Feb. 2013 as per the Consumer Personal Ledger. **The Respondent contended that this connection was sanctioned for Fire Pump but was used for Fire Lift also, which is an irregularity.** [Note: From the list of 7 connections tabulated in Table 1, it is not clear which was supposed to be the connection for 'fire lift'.] The Respondent has not clearly explained why or in what circumstances this connection was made PD.

5. We have examined the list of 7 connections to understand why the 'Fire Pump' connection might have been made PD, and whether it was done for the purpose of clubbing multiple / unnecessary connections. The Respondent issued Circular No. 110 dated 16.02.2010 regarding clubbing of common meters (lifts, staircase, water pump, compound lighting, etc.) of residential housing societies & commercial complexes. However, this clubbing of meters of common use has a different rationale and philosophy. There is no provision anywhere for clubbing of Fire Pump meter with the common meters; in fact, it is not desirable or correct technically. The recent concept of 'Fire lift' is developed for fire security in high rise buildings, which is fully automated with certain conditions of fire safety requirements. In the normal course, such fire lifts are recommended to have an independent connection; so that it will be operational during an emergency. Hence, the Fire Pump and Fire Lift should be operated from a separate alternate source of power in general. Hence, the Respondent's rationale for clubbing the Fire Pump connection is not correct.

  
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6. The Appellant denies that this connection (of fire pump) was made PD in 2013. Generally, the PD arrears are intimated to the consumer at the time of such disconnection. However, in the instant case, the arrears were intimated for the first time only on 18.01.2019. The Respondent inspected the premises of the Appellant on 18.12.2018 and it was observed that though allegedly the supply of the Appellant was permanently disconnected in Feb.2013, the meter of the Appellant remained and was functional on site. On this meter, the Fire Pump as well as two Fire lifts were working.

7. The Respondent issued a supplementary bill of plain recovery of **Rs.7,45,400/- to the Appellant on 18.01.2019** based on an average of 911 units per month, for the period of Feb.-13 to Dec.-18 (71 months) for 64,681 units, based on the average consumption of the two lifts. The Appellant has not raised any dispute regarding the consumption pattern of 911 units per month. However, it has disputed the retrospective recovery for 71 months.

8. From the facts and circumstances of the case, we find that the Respondent has not provided any satisfactory explanation as to why it did not remove the PD meter of the fire pump in time; i.e. in 2013. In all the subsequent years, the Respondent failed to identify the extra meter in meter cabin which was not billed at all. Had it done so, the mistake would have come to notice much earlier, and the high amount of retrospective bill for 71 months could have been avoided. This is nothing but deficiency in service. Hence, we hold that retrospective recovery towards assessed consumption should be limited to two years, counting from the date of detection of mistake / cause of action. Therefore, we hold that in the instant case, the valid recovery period will be two years retrospectively from Dec. 2018, i.e. from January 2017 to Dec. 2018.

9. The Respondent claims that the grievance before the Forum was time barred, as mentioned in para 2 (x). The following issue is framed for determination of the grievance.

  
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**Issue :** When did the cause of action arise, and whether the grievance is time barred accordingly?

The answer is in the Negative.

The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 came into force from 20.04.2006. The procedure for redressal of grievance is defined as below:

*6.6 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.”*


Thereafter, the above CGRF & EO Regulations 2006 was replaced by the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 on 21.09.2020. The Regulation 6.6 was replaced by Regulation 7.8; however, the content in Regulation 6.6 and 7.8 remained the same.

In the instant case, the cause of action arose when the Respondent issued a supplementary bill of Rs. 7,45,400/- to the Appellant on **18.01.2019** for the period of Feb.-13 to Dec.-18 ( 71 months). The Appellant approached the Forum on 25.04.2022. Considering the overlap with the Covid-19 Pandemic period as well the gravity of the grievance, the delay in filing the grievance in the grievance redressal mechanism is hereby condoned.

10. Based on the above analysis, the order of the Forum is set aside.

11. The Respondent is directed as under: -

- a) to revise the supplementary bill of Rs. **Rs.7,45,400/-** [based on an average of 911 units per month, for the period of Feb.-13 to Dec.-18 (71 months)] for two years retrospectively from Dec. 2018, i.e. from January 2017 to Dec. 2018.
- b) The refund of the amount be adjusted in the ensuing bills of the Society.
- c) Fire Pump connection be restored within a period of two months.


  
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- d) The Appellant has to apply for extension of load (if required) considering the load of Fire pump as well as Fire Lifts.
- e) Compliance to be submitted within two months from the date of issue of this order.
- f) Other prayers of the Appellant are rejected.

12. The Representation is disposed of accordingly.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
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