

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 10, 11, 12 & 13 OF 2022

In the matter of change of tariff category

- | | | |
|------------------------------------|---------------------|------------------|
| 1. Rubina Mohammedali Merchant | (Rep.No.10 of 2022) | Appellants |
| 2. Rubina M. & R.M. Merchant | (Rep.No.11 of 2022) | |
| 3. Raj. M. Merchant | (Rep.No.12 of 2022) | |
| 4. S. M. Merchant & M. T. Merchant | (Rep.No.13 of 2022) | |

V/s.

Brihanmumbai Electric Supply and Transport Undertaking) ('C' Ward) Respondent
(BEST Undertaking)

Appearances:

Appellant : 1. Rubina M. Merchant
2. Raj. M. Merchant

Respondent : 1. Satish M. Inchanalkar, Supdt. BEST Undertaking
2. D. S. Dorage, AAM (C Ward)


Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 29th March 2022

Date of Order : 5th April 2022

ORDER

These four Representations are filed on 17th February 2022 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 individual orders dated 31st January 2022 in Case No. 448, 450, 451 and Review Order dated


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



31st January 2022 in Case No.429 respectively passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).

2. The Forum, by its orders, has rejected all grievance applications which are tabulated as below: -

Table A


Rep.No.	Appellants	Consumer A/c. No.	Schedule A filed on	Date of Forum's Order	Review filed on	Date of Review Order
10 of 2022	Rubina Mohammedali Merchant	343-215-006	18.10.2021	31.01.2022	N.A.	N.A.
11 of 2022	Rubina M. & R.M. Merchant	343-215-023	18.10.2021	31.01.2022	N.A.	N.A.
12 of 2022	Raj. M. Merchant	343-215-039	18.10.2021	31.01.2022	N.A.	N.A.
13 of 2022	S. M. Merchant & M. T. Merchant	343-215-025	28.04.2021	28.09.2021	18.10.2021	31.01.2022

3. Aggrieved by the orders of the Forum, the Appellants have filed these four representations individually. Since the cases are represented jointly, the issues being common, the Respondent being same, and all submissions and arguments being common, these four Representations are clubbed together for the purpose of this order.

4. The Appellants' submissions in these four Representations are in brief as under: -

- (i) The Appellants are the Occupiers/ Owners/ Landlords of Shirin Manzil, Chira Bazar, S.P. Marg, Mumbai. The said building comprises of Ground + four floors. The electricity connections were taken for domestic use under tariff category of LT I (B): LT-Residential initially.
- (ii) The details of these four Representations are tabulated as below: -


Table B


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Sr. No.	Rep. No.	Appellants	Consumer A/c. No.	Address
1	10 of 2022	Rubina Mohammedali Merchant	343-215-006	201, Second Floor, Shirin Manzil, Plot 33, S.P. Marg, Chira Bazar, Mumbai
2	11 of 2022	Rubina M. & R.M. Merchant	343-215-023	Third Floor, Shirin Manzil, Plot 33, S.P. Marg, Chira Bazar, Mumbai
3	12 of 2022	Raj. M. Merchant	343-215-039	301, Third Floor, Shirin Manzil, Plot 33, S.P. Marg, Chira Bazar, Mumbai
4	13 of 2022	S. M. Merchant & M. T. Merchant	343-215-025	First Floor, Shirin Manzil, Plot 33, S.P. Marg, Chira Bazar, Mumbai


- (iii) The Appellants are residing on 4th floor of the same building. They had received a letter dated 21.10.2020 from the Respondent for change of tariff category from LT I (B): LT-Residential to LT IV (B): Public Services - Others of 1st, 2nd and 3rd floors of the same building where they reside. Hence, the Appellants are billed wrongly in LT IV (B): Public Services – Others, tariff category onwards. The tariff rate of LT I (B): LT - Residential tariff category is lower than the tariff rate of LT IV (B): Public Services – Others.
- (iv) Thereafter, the Appellants approached the Forum on the dates as mentioned in Table A to contend against the change of tariff category. The Forum, however, dismissed their cases. The Appellant in Rep. No. 13 of 2022 has filed Review Application in the Forum. The Forum, by its order, has also dismissed the Review Application. Hence, they approached the Electricity Ombudsman for redressal of their grievances.
- (v) The Appellants have given their premises on 1st, 2nd and 3rd floor on Leave and License Agreements for eleven months as per Section 24 of the Maharashtra Rent Control Act, 1999. The Respondent has alleged that their premises were used as hostel / guest house for Students or Working Men/Women without any documentary evidence. The said allegations by the Respondent were affirmed by the Forum. The reasons recorded by the Forum in its order were unsatisfactory and without any documentary evidence. The Forum failed to understand the following facts: -
- (a) There are no such documents, neither of Respondent nor any MCGM official mentioning that the premises is used for running hostel or guest house. The


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



term hostel has never been encountered in any of their report. However, all the reports /documents of Respondent, its Internal Grievance Redressal Cell (IGRC) as well as MCGM have mentioned in their reports that the said premises are being used for residential purposes and no evidence of guest house/hostel/lodging boarding was found.

- (b) Interpretation of Inspection Report dated 29.03.2019 of Mr. Shrikant S. Mahesh, Superintendent, Customer Care, C Ward of the Respondent clearly established that these premises are used for residential purpose by either Students or Working Men/Women on Leave and Licence basis. There was no evidence on which it can be termed as Guest House, Lodge or Hostel.
- (c) The interpretation of Letter dated 28.02.2019 of D.R Pakhare, Asstt. Administrative Officer (IGRC) clearly established that there were no Sign Board, Cash Counter, Customer Registers, Room Keyboards, Receptionist, Room Service Staff etc. and all the premises are used for residential purpose.
- (d) The Report dated 02.07.2018 by S.O. V.B.Pangarkar, Memonwada Fire Station, Mumbai Fire Brigade stated that Mrs Shamim Mohammedali Merchant, landlady of the building has given the room on Ground, First, Second & Third floor on rent for residential purpose as per Leave and Licence Agreement.
- (e) Shri Arvind Chavan, Deputy Assessor and Collector by his Letter dated 24.04.2018 mentioned the various definitions of guest house & hostel and concluded that the premises are not being observed to being used as hostel.
- (f) Letter dated 07.11.2017 by Assistant Health Officer (A,B,C Ward), BMC, Public Health Department states that there is no specific name, no sign board and no employees are appointed for services. So, it cannot be considered as a lodging house.
- (g) The Appellants pointed out in the Plea of Accused dated 23.10.2019 summoned by Hon'ble S.U. Mahadar, Metropolitan Magistrate, Shindewadi, Dadar, mentioned that the case was about the activity of illegal use of residential premises for lodging activity without license required under


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Section 394 (1) (e) (i). Further, the Court has considered the evidence, facts and statement of witnesses and then passed the order that the complainants could not prove the trade of lodging house was being carried out and hence acquitted the Appellants from activity of illegal use of residential premises for lodging activity. Hence, the order of Metropolitan Magistrate is relevant since it indirectly proves that the premises were used only for residential purposes.

- (h) The statute which is relevant for a Leave and Licence Agreement is the Indian Easement Act, 1882. Section 52 of that Act defines

“Licence - where one person grants to another, or to a definite number of other persons, a right to do, or to continue to do, in or upon the immovable property of grantor.....”

- (i) Here, it would like to put emphasis on “definite number of other persons” in the definition of license. And hence in the Appellant’s Leave and License Agreement, there are three / four Licensees which does not go against the definition of License.
- (j) The Appellants also pointed out that Maharashtra Rent Control Act, 1999 defines “Licensee”, in respect of any premises or any part thereof. The definition does not mention anywhere that the licensee has to be from and same family or relatives of each other. Also, nowhere it has mentioned that they have to collectively live, cook and dine. Also, there is no documentary evidence given by the Forum to state the licensees were not friends. Hence, the above reasons of the Forum were merely based on their personal assumptions on definition of licence and licensee.
- (k) The assessment of premises as commercial for property taxes passed by Deputy Assistant Collector, Sudhakar Tadge has been challenged by the Appellants in Small Cause Court. His order of tax assessment of premises as lodging and boarding cannot be considered in the present case as he has himself admitted in his cross examination at Metropolitan Magistrate Court that he had not visited the offence premises personally.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (1) Hon'ble Judge R. J. Patil, Metropolitan Magistrate Court, Shindewadi, Dadar has also mentioned in his order that

“said order (property tax assessment) is sub judice. Therefore, on the basis of such order cannot become conclusive proof of evidence to prove that the accused was running lodging house at offense premises.”

Hence, if Hon'ble Judge of Metropolitan Magistrate Court did not consider Assessment Department's order as conclusive proof of evidence to prove the use of residential premises as commercial premises as guest house; then, how can the Forum corroborate the case of Respondent by the document submitted by the assessment and state that it was rightfully submitted by the representative of the Respondent.

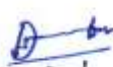
- (vi) Hence, the Appellants' request to put aside the assumptions considered by the Forum on the definition of licence and licensee as well the documentary evidence of assessment department since the matter is sub judice which even Hon'ble Judge of Metropolitan Court does not consider to be conclusive evidence.

- (vii) The Appellants request to consider the following points which were also submitted to the Forum and IGRC.

- All the documentary evidence in the form of various reports given by BEST Undertaking themselves and other officials of MCGM, one including the then Deputy Assessor and Collector Arvind Chavan's report.
- The order passed by the Hon'ble Judge of Metropolitan Magistrate in response to the case filed by Public Health Official regarding the illegal use of residential premises for lodging activity.
- The Definitions of Licence and Licensee as per Indian Easement Act and Maharashtra Rent Control Act.

- (viii) In view of above, the Appellants pray that the Respondent be directed to change the tariff category from LT IV (B): Public Services- Others to LT I (B): LT Residential.

5. The Respondent by its letter dated 11.03.2022 has submitted its reply, which in brief is stated as below: -


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (i) The Appellants are the Occupiers/ Owners/ Landlords of Shirin Manzil, Chira Bazar, S.P. Marg, Mumbai. The said building comprises of Ground + four floors having electric connections under tariff category of LT I (B): LT-Residential firstly.
- (ii) As per routine inspection on 06.09.2017, the Respondent found that the premises was unauthorizedly used for non-residential activity i.e., guest house, lodge (paying guest).
- (iii) The Superintendent, Customer Care 'C' ward of the Respondent issued notice under Section 126 of the Electricity Act, 2003 (the Act) for unauthorised use of electricity from Residential to Commercial purpose.
- (iv) The RTI Activists James D'costa and ZanaB Rassiwala had complained that illegal lodging activity is carried out in said premises without obtaining any permissions from the concerned authorities of MCGM. Senior officers of Mumbai Fire Brigade of MCGM visited the premises on 18.10.2017 and submitted report dated 03.11.2017. During the visit of the officer concerned, he found that the said premises was utilised for lodging purpose from Ground floor to Third floor. The Complaint Report of Mumbai Fire Brigade was prepared on 07.02.2018. In the said report, it was concluded as under: -

"7) Conclusions: An illegal use of residential premises for the purpose of commercial one like lodging activities without holding valid licenses from the medical officers of health and without obtaining N.O.C. of Fire Safety Measures from C.F.O.'s department is highly objectionable from the Fire risk and Life Safety Measures point of view."

Likewise, further Complaint Report dated 20.08.2018 of Mumbai Fire Brigade also has the same content.

- (v) Letter from MCGM Authority, Complainant of D'costa, Inspection Reports of Public Health Department, and speaking order for property assessment of the premises, confirms that the premise of 33, Shirin Manzil is used for running business of illegal lodging and guest house.
- (vi) The Complaint Report dated 07.02.2018 of Divisional Fire officer, stated that,


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



“During the visit of officer concerned, he found from ground to 3rd floor premises of 33 Shirin Manzil building was utilized for lodging purpose and he further noted at rest of the three sites no lodging activities were found.”

Same is also mentioned in Complaint Report dated 20.08.2018 of Asst. Div. Fire Officer in the Observation.

- (vii) Shri Arvind Chavan, Deputy Assessor and Collector of MCGM, in his letter dated 24.04.2018 has referred various definitions of Guesthouse & Hostel, and finally concluded that the premises are being used as Hostel.
- (viii) As per routine inspection on 06.09.2017, the Respondent found that the premises was illegally used for non-residential activity. As per Inspection Report, it is stated that


“in the premises no residential activity found and the existing meter no. A297844 is used for guest house, lodge (paying guest).”

- (ix) As per inspection report of Respondent, Fire brigade, Health Department of MCGM, there was illegal lodging activity run in the premises. Hence, the tariff of the Appellants was changed from LT-I(B): Residential to LT-II(B) Commercial Tariff Category with the assessment for the previous one year as per Section 126 of the Act as the Guest House is being categorized under Commercial tariff category.
- (x) The Appellant filed grievances in IGRC on 25.01.2019 for change of tariff category from commercial to residential. The Appellant stated in IGRC application which is reproduced as below:-

*“I am giving my vacant rooms on leave license agreement bases temporarily strictly for residential purposes to all **student and working needy persons**. As per your law available on MERC site page no 292 and 293 of 350 states that all student and **working needy person can be give on Live license purpose reference attaching the Xerox copy of the same**” (Emphasis added)*


This clearly specify that the Appellants themselves have accepted, that they are giving premises on rental basis to students and/or working needy persons.

- (xi) The IGRC, by its order dated 28.02.2019 has directed to change the tariff category from Commercial to Residential as per tariff category of the Commission in force.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xii) A reply letter dated 29.03.2019 was given to James D'costa for the RTI No. 57 and 59 dated 16.03.2019 which was filed by him. In the said letter, it was confirmed that the premises could not be termed as Guest House, Lodge in line with IGRC order. However, subsequently it was also mentioned that the said premises were found to be used for residential activity by Students and/ or Working Men, etc. Further it was also informed that legal department of the Respondent has given advice that, *"the activity of the consumer does not cover under private residential premises. Hence tariff LT-I (Residential) does not become applicable."*
- (xiii) Asst. Administrative Officer, C Ward of the Respondent, by its letter dated 28.02.2019, has confirmed to the Appellant, that the said premises categorised under Residential Tariff Category as per Tariff Order of the Maharashtra Electricity Regulatory Commission (Commission) in Case No. 33 of 2016 for the period from 01.10.2016 to 31.03.2020. as *"All Student or working Men/Women hostel"* classify under Residential Tariff Category.
- (xiv) Further, as per Tariff Order of the Commission dated 30.03.2020 in Case No.324 of 2019, the category *"All students working Men/Women's Hostel"* is classified under LT IV (B): Public Services and Others from 01.04.2020 and valid up to 31.03.2025.
- (xv) Accordingly, the Respondent by its letter dated 21.10.2020 has informed the Appellant for change of tariff category from Residential to LT IV (B): Public Services and Others as per Tariff Order dated 30.03.2020 in Case No. 324 of 2019 of the Commission, which is in force.
- (xvi) The Respondent obtained advice of its legal department for change of tariff category from LT- I (B) : Residential to LT IV (B): Public Services and Others. The Respondent has considered tariff applicability for similar cases where the purposes were notified as *'All students working Men/Women's Hostel.'* The Respondent referred the WP (L) No.1082 of 2009 in Case of Ram Prakash V/s. BSES Rajdhani Power Ltd., wherein Petitioner's electric connection was sanctioned for domestic purpose, however, during inspection by the Respondent, it was found that Petitioner uses the premises as Paying Guest/Hostel which amounts to misuse of domestic


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




connection. The Hon'ble High Court, Delhi accepted views of the Respondent. The petitioner has been using the premises for commercial purpose, that is for letting it out to working women and not using the said premises for his own use.

- (xvii) Legal Department has finally concluded that, even though the Appellant has submitted Leave and License Agreement showing premises was used as residence but taking into consideration of above said report and citation, the activity of the Appellant in the instant matter does not cover under private residential premises. Hence tariff LT-I (B) (Residential) does not become applicable.
- (xviii) The Respondent has received a speaking order dated 23.10.2020 of Assessing Officer of MCGM for the Complainant of James D'costa. Further, it was also enquired to Assistant Assessing Officer 'C' Ward MCGM to know about the present property assessment category of Plot 33, Shirin Manzil. From the statement forwarded by Assistant Assessing Officer 'C' Ward MCGM, it is observed that the said premises is categorized under Commercial for property assessment.
- (xix) Considering above fact, the Forum, by its orders, has rightly rejected all grievance applications.
- (xx) In view of above, the Respondent prays that the Representations of the Appellants be rejected.

6. The Appellant has filed its rejoinder by email dated 22.03.2022 in response to the reply of the Respondent which is stated in brief by avoiding repetition as under:

- (i) The inspection report dated 06.09.2017 was challenged in IGRC. The report states that the premises were inspected by staff/officers of Customer Care, 'C' Ward and Vigilance South Departments prior to submission of Internal Grievances. The Report states that there were no signs indicating the premise can be termed as guest house or lodge and all the premises are used as residential purposes i.e either for personal use or sublet on leave and licence agreement as per Maharashtra Rent Control Act 1999.
- (ii) The Appellants would like to bring to notice that the Report submitted to the Respondent by Mr James Dcosta and Zainab Rassiwala (both being outsiders i.e., third party altogether, not pertaining to this dispute) can manipulate/fabricate the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




reports. The Reports are all scanned by Cam scanner and hence can be easily edited for nefarious reasons since Appellants have years of animosity between the parties.

- (iii) The Judge of Metropolitan Magistrate 41st Court, Shindewadi ,Dadar (CNR No. MHMM21-0002560-2018) has not relied on the evidence by James D'Costa in his order dated 23.09.2021. The relevant portion of the order is quoted as below:

*“18. Further, the complainant relied on the evidence of C.W. No.03 D'James who is original complainant on the basis of his complaint C.W.No.01 conducted inspection of offence premises. He made complaint at Exh.14 to Exh.18 to take action against the accused. He stated that, he received information from the assessment department under Right to Information Act and on that basis he stating that, the accused using the suit premises for commercial purpose. He produced electricity bills for the month of November 2017, December 2017 and January, February 2018. **But said electricity bills not original. Therefore, they have not exhibited and considered in evidence.** Said witness admitted in cross-examination that, **he was not permitted to enter into the offence premises for the reason that, he was restricted to enter by the Hon'ble City Civil Court and he made complaint without entering into the suit premises.** In such circumstances it is difficult to ascertain how he can say that, the suit premises was using as lodging house.”(Emphasis added).*

- (iv) It is crystal clear that there is no evidence that the activity of lodge, hostels etc. are carried out in the said premises. The premises are given for rental basis as per Leave and Licence Agreement in force. Hence, the Appellants pray that the Respondent be directed to change the tariff category from LT IV (B) to LT I (B).

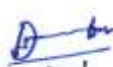
7. A physical hearing was held on 29.03.2022 with due protocols followed under Covid-19 epidemic. The parties were heard in common for the above four Representations. The Appellants argued in line with their written submissions that the Appellants are the Occupiers/ Owners/ Landlords of the said property. The said building comprises of Ground + four floors. The Appellants are residing on the 4th floor of the same building. They had received a letter dated 21.10.2020 from the Respondent for change of tariff category from LT I (B) : Residential to LT IV (B): Public Services and Others of 1st, 2nd, and 3rd floors of the same building. The Appellants object to this change of tariff category. The Appellants have given their premises on rental basis for Residential purpose on 1st, 2nd and 3rd floor on the strength of Leave and License Agreement for eleven months as per Section 24 of the Maharashtra Rent Control Act,


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



1999. The Appellants also mentioned that the Assessment Department vide letter dated 24.04.2018 mentioned the various definitions of guest house & hostel and concluded that the premises are not being used as hostel. Similarly, Assistant Health Officer (A, B, C Ward), BMC, Public Health Department states vide letter dated 07.11.2017 that there is no specific name, no sign board and no employee is appointed for services. So, it cannot be considered as a lodging house. It was also pointed out that the Plea before the Metropolitan Magistrate, Shindewadi, Dadar was about the activity of illegal use of residential premises for lodging activity without license required under Section 394 (1) (e) (i). Further, the Court has considered the evidence, facts and statement of witnesses and passed the order that the complainants could not prove that the trade of lodging house was being carried out and hence acquitted the Appellants of activity of illegal use of residential premises for lodging activity. The Appellants mentioned that there are two flats on each of the three floors, and one flat on the second floor is locked. They have entered into Leave & Licence Agreement for each flat. The Appellants argued that the reasons recorded by the Forum in its order were unsatisfactory and without any documentary evidence. The Appellants have stated that the IGRC order dated 29.03.2019 have mentioned in their findings that the premises were used for residential purpose.

8. The Respondent argued in line with its written reply. The Respondent argued that on 06.09.2017, the Respondent found that the premises was unauthorizedly used for non-residential activity i.e., guest house, lodge (paying guest). Hence, a notice was issued under Section 126 of the Act for unauthorised use of electricity from Residential to Commercial purpose. Penalty was charged for previous 12 months. The Appellants approached the IGRC and mentioned that the activities are carried out for Residential purpose on strength of Leave & License Agreement temporarily for students and working needy persons. It was argued that various authorities of the Respondent and MCGM have inspected the premises and all Inspecting Authorities have concluded that the premises are being used for business purpose on 'per person' basis for students and/or working men/women. Families are not staying there. The Respondent inspected the premises on 24.03.2022. It was observed that working men are staying there on Sharing and Bed basis. The Rooms look like dormitory/ student house and various beds are there which were allotted individually. The Respondent billed them in Tariff



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Category of LT IV (B) :Public Services and Others as per Tariff Order of the Commission which is effective from 01.4.2020. The Respondent argued that the Property Tax levied by MCGM for the said premises is commercial at present. The Respondent further argued that no kitchen activities are carried out there and they have to manage their food themselves from outside source. Considering these factors all together, the Appellants are, in effect, running the business of working Men/Women/Student Hostel. It is seen that this business of hostel is done with the help of digital marketing and mouth publicity. In view of above, the Respondent prays that the Representations of the Appellants be rejected.

9. Post Hearing, as per direction from the Undersigned, the Secretary by email dated 30.03.2022 has informed the Respondent to submit current photographs immediately.

10. The Respondent, by its letter dated 30.03.2022 has submitted the consolidated Site Inspection Report of the said premises which is reproduced below:


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Inspection Report dated 24.03.2022 of 1st, 2nd & 3rd floors of Shirin Manzil							
Rep. No.	Name of the consumer	Meter No	Consumer A/c. No.	No. of beds	Connected Load (KW)	Kitchen Platform available in the room	Remarks
10	Rubina M. Merchant	1160216	343-215-006	7	0.75	No	No dining Activity was observed. Number of Beds observed is 7 and 3 persons were available during the inspection. The premises is used for paying Guest House
11	Rubina M. & R. M. Merchant	3227870	343-215-023	10	0.52	No	No dining Activity was observed. Number of Beds observed is 10 and 3 persons were available during the inspection. The premises is used for paying Guest House
12	Raj M. Merchant	3227870	343-215-039	9	0.52	No	No dining Activity was observed. Number of Beds observed is 9 and 6 persons was available during the inspection. Out of 6 number of available persons, only Somnath and Shaktiman were available from the list mentioned in Leave & Licence Agreement . Rest of persons, namely, Nilesh, Sanjay, Kunal Dhinde, Piyush Choudhary were not included in the Leave & Licence Agreement. The premises is used for Paying Guest purpose.
13	S.M. Merchant & M.T. Merchant	3227871	343-215-025	9	0.72	No	No dining Activity was observed. Number of Beds observed is 9 and 3 persons were available during the inspection. The premises is used for paying Guest House purpose.
Total				35			
Note: It is seen that the Appellants have advertised digitally for Paying Guest facility on Magic brics.com, Nobroker.com, Housing.com, Nicelocal.com etc. which are property web sites for PG accommodation .							

11. The Appellants vide their email dated 01.04.2022 and the Respondent vide letter dated 04.04.2022 submitted the various photographs of the said premises as per direction of the Electricity Ombudsman (Mumbai). Beds are seen in the photographs as described in the discussions.

Analysis and Ruling

12. Heard the parties and perused the documents on record. The Appellants are the Occupiers/ Owners/ Landlords of Shirin Manzil which is a Ground + four storied building near Marine Lines. The electricity connections were initially taken for domestic purpose under tariff category of LT I (B): LT-Residential. The Appellants reside on the 4th floor of the same building and the 1st, 2nd & 3rd floors of the building are given on Paying Guest (PG) basis.

13. The Appellant contended that the premises on 1st, 2nd and 3rd floor are given for purely residential purpose as per leave and license agreements duly registered for eleven months as


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



per Section 24 of the Maharashtra Rent Control Act, 1999, and they are not running any commercial activity for lodging / boarding, hostels, guest house, etc.


14. According to the Respondent, the Appellants are running hostel for working men / women, on a 'per bed' basis and hence as per the Tariff Order of the Commission in Case No. 324 of 2019 which is in force from 01.04.2020, the Respondent by its letter dated 21.10.2020 has informed the Appellant for change of tariff category from LT I (B): LT-Residential to LT IV (B): LT - Public Services -Others.

15. While perusing the IGRC application dated 25.01.2019 of the Appellants, it is observed that the Appellants have stated in this application which is reproduced below:-

*"I am giving my vacant rooms on leave license agreement bases temporarily strictly for residential purposes to all **student and working needy persons**. As per your law available on **MERC site page no 292 and 293 of 350 states that all student and working needy person can be give on Live license purpose reference attaching the Xerox copy of the same**" (Emphasis added)*

Thus, it is established that the Appellants have given their premises to students and working needy persons. The issue under contention is whether this amounts to running a hostel or conducting commercial activity or not.

16. The Respondent by its letter dated 30.03.2022 has submitted the consolidated Site Inspection Report of the said premises which is shown in Para No. 10 above. It is seen that 7, 10, 9 & 9 beds respectively are found in the four flats covered under the said Representations, and the number of persons present in the premises were 4,3,6 & 4 respectively. There is no dining activity observed, neither is any kitchen platform available in any of the alleged premises. The Respondent has also pointed out that the Appellants have advertised digitally for Paying Guest facility on Magic brics.com, Nobroker.com, Housing.com, Nicelocal.com etc. which are property web sites for PG accommodation.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



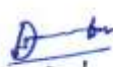
17. The main point of contention seems to be whether the said premises can be considered to be a hostel or Leave & Licence rented premises. If it is a hostel, then it is liable to be covered under the tariff category for LT IV (B): LT - Public Services -Others. If it is on a genuine Leave & Licence basis, then it is expected to be covered under the Residential tariff category.

18. In order to determine the above aspect, an important factor is whether the rent is being collected on a 'per person' basis or on 'per flat' basis. Premises under dispute consists of four flats, and the Appellant stated that 3 to 4 persons are staying in each flat. From the inspection report, it was seen that in the flat of Rep. No. 12 of 2022, there were 9 beds, and physically 6 persons were actually present at the time of inspection. The inspection report of this flat is reproduced below:

"No dining Activity was observed. Number of Beds observed is 9 and 6 persons was available during the inspection. Out of 6 Nos. available person, only Somnath and Shaktiman were available from the list mentioned in Leave Licence Agreement. Rest of persons, namely, Nilesh, Sanjay, Kunal Dhinde, Piyush Choudhary were not included in the Leave Licence Agreement. The premises is used for paying Guest purpose."

From this inspection, it is indicated that the formal Leave & Licence Agreement was signed only by 4 residents, while the others were staying on a 'per bed' basis without signing any agreement. Obviously, these residents are not residing free of cost, and must be paying charges which are not brought on record. It is also seen that there are 7 to 10 beds kept in the flats, whereas the Appellants mentioned that 3 to 4 persons stay in each flat. If that is the case, then there is no reason to keep extra beds in the flats, unless they are meant for PG purpose. The Site Inspection report also shows that more than 4 persons were staying in the flats, even though the Leave & Licence Agreement is signed only by 3 or 4 persons. In view of above, it can be inferred that the rent is collected on 'per person' basis and not on combined fixed 'per flat' basis and amounts to public services.

19. In the instant case, it is seen that the flats in Representation No. 10, 11,13 of 2022 are paying rent of Rs.12000/- for 3 licensees, while the flat in Representation No. 12 of 2022 is paying rent of Rs.16000/- for 4 licensees. Thus, it seems that the rent is collected on a per licensee basis at the rate of Rs.4000/- per licensee. This is the declared rate as per the Leave &


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Licence Agreements. Thus, the rent is not a fixed amount per flat but varies, depending upon the number of licensees living there. In another words, rent is collected on an individual basis. The premises are advertised on various PG websites and there seems to be a continuous flow of new individual residents. Thus, the premises are liable to be covered for rates applicable to LT IV (B): LT - Public Services -Others and not for Residential tariff category.

20. It is also seen that the said premises are seen and rated on the internet, indicating PG use for interested guests or licensees. One of the internet reviews mentions *“It's a male and female PG, near about 5k to 6k monthly, and one month deposit.”* If the premises are genuinely rented out on long term Leave & License basis, they should no longer be available to other interested guests, and there is no reason for such premises to be displayed on the internet. Considering all the views expressed by all the parties, the overall purpose of the premises is nothing but providing PG accommodation for individual working men / women. This indicates that the tariff category of LT IV (B): LT - Public Services -Others is applicable to the concerned premises.

21. The Forum has correctly analysed all the cases and has given a reasoned order, and hence there is no necessity to interfere in the order of the Forum.

22. All four Representations are disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

