

**OFFICE OF
THE ELECTRICITY OMBUDSMAN
ASSAM ELECTRICITY REGULATORY COMMISSION**

FILE NO. EOM. 44/2021

Petition No.: 1/2021

Name of Petitioner: Shri Sanjib Saikia,
s/o Late Dandidhar Saikia,
House No.: 189/2, Ganeshguri Chariali,
Guwahati- 781006

ORDER SHEET

13.08.2021

This is an appeal petition filed by Shri Sanjib Saikia , s/o Late Dandidhar Saikia, House No.: 189/2, Ganeshguri Chariali, Guwahati - 781006 against the Judgement and Order dated 11.01.2021 of the Consumer Grievance Redressal Forum, Guwahati in CP case No. 8/2020. In this appeal petition the complaint of the appellant is against the installation of the transformer for supply of electricity to Geetanjali Apartment and 36 electric connections given to the Apartment. The claim of the appellant is that if the installation of the transformer was done and the 36 electric connections given during the period from 31.07.2006 to 22.05.2014 on the basis of Power of Attorney No. 641/05 executed by his father Dandidhar Saikia the same is illegal as the validity of the aforesaid Power of Attorney expired with the demise of his father on 31.07.2006 and on the other hand the builder actually had filed a petition before the Arb. Tribunal on 05.05.2014 praying for a direction from its end to the appellant to execute a registered POA for completion of the project. So, the contention of the appellant is that if the installation of the transformer was done and the 36 electric connections given during the period from 31.07.2006 to 22.05.2014 it is illegal.

In this connection the respondent SDE, Zoo Road Electrical Sub-Division, APDCL has submitted vide No. SDE/ZRES/CGRF/2021-22/431 dated 19.07.2021 that there are 36 no. of active electric connections in Geetanjali Apartment and one more electric connection is given for Geetanjali Apartment Housing Society for power consumption of common facilities. It is further stated by the SDE that six more electric connections were given during February, 2009 and March, 2009 in the name of Shri Sanjib Saikia but these connections were discontinued due to non-payment of dues.

The respondent SDE states that although Shri Sanjib Saikia complains that electricity connections to Geetanjali Apartment was taken in a fraudulent manner by the builder by using the Power of Attorney of his deceased father and that from the date of his father's demise on 31.07.2006 to 22.05.2014 the builder had no authority to apply for any electric connection no record of complaint having been lodged to APDCL against these electric connection during the period has however been found. It is submitted by the SDE that the matter was brought to the knowledge of the APDCL officials in 2020 after a long gap of more than a decade of charging the transformer. It is stated that Shri Sanjib Saikia requested them to register the transformer in his name as he is the land owner of the plot of land. The SDE submits that only for consumption of electricity for common facilities the bill is issued in the name of Geetanjali

Apartment Housing Society and all other electricity bills are issued against individuals.

The SDE has informed that documents related to electricity service connection could not be traced out in his office despite persistent thorough and repeated searches over a long period of time. It is further informed that the documents were also searched thoroughly in the office of the AGM, GED (East) but could not be found. It is stated that the Chief Executive Officer, Guwahati Electrical Circle-I, APDCL is also trying to trace out the service connection documents in his office and the same will be submitted as soon as these are traced out.

It is informed that a new connection consumer No. 017010043382 has been given on 03.06.2021 as per request of Shri Sanjib Saikia on 03.06.2021. The remaining five no. of service connections will be given as and when he applies.

As already stated the claim of the appellant is that the installation of the transformer if done and the 36 electric connections if given during the period from 31.07.2006 to 22.05.2014 this is illegal. Whereas 31.07.2006 is the date of demise of the appellant's father the significance of the date 22.05.2014 lies in the fact that a registered irrevocable Power of Attorney was executed by the Appellant Shri Sanjib Saikia in favour of the builder for the completion of Geetanjali Height project the very next day on 23.05.2014. So, the appellant claims that anything done by the builder during the period from 31.07.2006 to 22.05.2014 on the power of Power of Attorney executed by his father Dandidhar Saikia is not legal.

The appellant has enclosed with his appeal petition copies of the following besides other papers.

- A. An application dated 05.05.2014 submitted by the builder before the Arbitrator in the Arbitral Proceeding No. 5/2012 for a direction to the claimant (here the appellant) to provide an appropriate Power of Attorney for completion/promotion of the Geetanjali Height project.
- B. Order dated 16.05.2014 in Arbitral Proceeding No. 5/2012.
- C. Registered Power of Attorney dated 23.05.2014 executed by the claimant (here the appellant Shri Sanjib Saikia) in the Arb. Proceeding.
- D. Letter dated 23.11.020 addressed to the SDE , Zoo Road Sub-Division, APDCL, Guwahati – 781005 by the President and the Secretary of Geetanjali Height Housing Society, GeetaNagra, Zoo-Narengi Road, Guwahati – 781020

We now examine the above one by one and mention the relevant paras of each for proper appreciation of the case and a logical conclusion.

The following paras of the application dated 05.05.2014 submitted by the builder before the Arbitrator in the Arbitral Proceeding No. 5/2012 are relevant for the purpose of the present appeal petition and are mentioned below with the Sl. No. as they appear there.

- A. The Relevant paras of the application dated 05.05.2014 submitted by the builder before the Arbitrator are mentioned below:

1. That Your Honour passed an Order dated 16.11.2013 stating inter-alia in para 4 at page 3 as follows:

“As stated in para 5 (b)(x) at page 5-6 of the joint petition the claimant shall provide all necessary documents, instruments, power of attorney as well as NOC to the Respondents for the smooth disposal of the properties and final sale and transfer of the flats/Apartments in “Geetanjali Heights” and for the greater interest of the legal heirs of late Dandidhar Saikia, the legal heirs of late Saniram Kalita and the prospective buyers of the flats/apartments in Geetanjali Heights”.

2. That the claimant has provided to the Respondent a Power of Attorney, a copy of which is enclosed herewith.
3. That the aforesaid power of attorney appears to be an independent act by the claimant, whereas it can only be a continuation of the original power of attorney No. 6417/04 dated 04.11.2004 and Deed of Agreement dated 25.04.2005 that has been executed by late Dandidhar Saikia (father of the claimant) with the respondents and for the said acts the prospective buyers in the said project are strongly objecting as the said clause in the power of attorney dated 11th day of March, 2014 by Shri Sanjib Saikia is interference by the said legal heir in matters pertaining to be in between the builder/respondents and the prospective buyers/consumers of flats in Geetanjali Heights.
4. That the Power of Attorney there is no reference to the original power of attorney No. 6417/04 dated 04.11.2004 and the Deed of Agreement dated 25.04.2005 that has been executed by late Dandidhar Saikia (father of the claimant) with the respondents.
7. That the aforesaid power of attorney executed by the claimant stipulates new conditions, in particular clause No. 4 and clause 6 which are arbitrary, illegal and beyond the conditions laid down in the original agreement for development dated 25.04.2005 and power of attorney dated 10.10.2004. As a result the prospective buyers of the flats/apartments have refused to pay further installments to enable the completion of “Geetanjali Heights” within the stipulated time of 9 months due to apprehension arising out of clause 4 and clause 6.
8. That the aforesaid power of attorney has not been registered under the Indian Registration Act, 1886 but has been merely notarized. It is most respectfully submitted that the aforesaid power of attorney is void ab initio.

- B. Relevant paras of the Order dated 15.05.2014 in the Arbitral Proceeding No. 5 of 2012 are mentioned below:

The paras are – Heard the parties and the learned Advocates in the matter of the power of attorney dated 15.03.2014. After taking note of the respective submissions of the parties, I am of the considered view that since this long pending dispute got settled mutually, it will not be in the interest of any of the parties to re-open the acrimonies and create a new dispute over the power of attorney. The parties have also expressed their keenness to implement the mutual settlement earlier arrived at. On my suggestion and intervention the parties have agreed to the following:

1. The claimant shall execute and hand over a registered power of attorney by omitting clauses 4 and 6 of the power of attorney dated 15.03.2014 and adding another clause empowering the Respondents Shri Pranjal Kumar Boralee to transfer and execute the final sale deeds of flats to the concerned buyers subject to the condition that such transfers and execution of final sale deeds shall be done only after transfer of the flats and Pent house due to the claimant as agreed upon by the joint petition dated 16.11.2013. The amended power of attorney as stated above shall be produced within a week from today.
 2. That the respondent Shri Pranjal Kumar Boralee shall take immediate steps to obtain the necessary completion certificate and the occupancy certificate as required under the prevailing Building Bye Laws and thereafter transfer the 6 (six) nos. of completed flats as mentioned in my order dated 16.11.2013 to the claimant within three months from today and report the position to this Tribunal on the next date fixed i.e. 16.08.2014.
- C. The relevant paras of the registered Power of Attorney executed by the appellant Shri Sajib Saikia in favour of the builder are:
1. That I authorize my attorney to carry out all acts and deeds including execution of documents, instruments, NOC etc. for the smooth disposal of the properties i.e. flats and apartments along with the proportionate share of land in "Geetanjali Heights" projects standing over the plot of land mentioned in the schedule below:
 5. To construct and complete the said building without any let or hindrance from anyone.
 6. To obtain electrical and water connection in his own name from the authorities.
 7. To execute deeds of agreements with prospective owners of the remaining flats/apartments/shop/rooms (i.e. excluding the flats/apartments/shop rooms allotted to me) accept booking money, advance, cost, installments, any dues, charges, fees etc. and use the said proceeds for construction of the said building.
 8. To sell/gift/transfer/lease/rent/hold the remaining flats/shop/apartments/rooms to anyone along with the proportionate share of land and to execute registered deeds of transfer for the said purpose.
 10. To represent me before any authority, corporation, board, courts or tribunal in any matter relating to land building or the flats and the necessary applications, suits etc. as may be called for.
 12. To enforce this power of attorney at all times, it being understood that this power of attorney shall be irrevocable in full force and effect till all matters and rights and obligations of our attorney are fully completed and accomplished.
 14. To transfer, execute and register Sale Deeds of the remaining flats/apartments (excluding the flats/apartments/pent house allotted in my name and the flats/apartments allotted to other legal heirs of late Dandidhar Saikia along with the proportionate undivided share of land in the names of the

remaining flats/apartments owners with whom my attorney has signed Deed of Agreement for construction and sale of flats/apartments in the buildings constructed on the said plot of land.

15. That such execution of Sale Deed with other prospective buyers to be done only after transferring my share as agreed upon myself and my attorney vide joint petition dated 16.11.2013 before Shri P.C. Borpujari, Hon'ble Arbitrator and His Honour's order thereof as well as decision of the said Arbitral Tribunal in a sitting dated 16.05.2014 directing me to provide the instant Power of Attorney on certain terms and conditions.

I, further confirm and endorse all acts, deeds or things done by my attorney till date.

D. The relevant paras of the letter dated 23.11.2020 addressed to the SDE, Zoo Narengi Road, Sub-Division, APDCL by the President and Secretary of Geetanjali Heights Housing Society, Geetanagar, Zoo Narengi Road, Guwahati – 20 are:

1. The Assam Power Distribution Company Ltd. (hereinafter APDCL) gave connections to all 36 flats and a common meter. That if it is true that the builder had not submitted the necessary documents required by, then this issue would have been raised much earlier rather than after 12 long years. All respective flat owners paid the builder the necessary amount of money against the transformer (Receipt enclosed).
2. That without valid papers our builder M/s. CEE PEE Realtors (P) Ltd. would not have been able to build Geetanjali Heights and hand over possession to the buyers in the year 2008 (GMC permission attached).
3. That APDCL gave connections to 36 customers and one common meter of our society for last 12 years. That if it believed that Society did not possess relevant paperwork, it has been supplying us electricity illegally for the same period is not true. We are paying electricity bill for last 12 years individually or as a Society (Through Common Meter Bill)
7. That after taking possession of the flats, most of the owners of the flats have acquired the proportionate share of land as well. That they have mutated their names in the scheduled land as co-pattadars of the scheduled land (Mutation and Khajana receipt attached).
8. That, for smooth functioning of all activities within Geetanjali Heights the owners of all flats formed a society in the name and style of "Geetanjali Heights Housing Society" and the same was registered under Societies Registration Act, XXI of 1860 in the office of the Registrar of Societies, Govt. of Assam in the year 2009. That the society registration is renewed by us from time to time as required by the Govt. Rules. That our registration no. is

Rs/KAM/240/A-18166. This is to mention you that all the owners/ members of the Geetanjali Heights Housing Society are abiding by all the rules of the society framed by us (Society registration and memorandum of society attached).

9. That most of us obtained individual Municipality Holding nos. in our names and are paying dues to the municipality (documents attached).
13. That, there was some feud between one of the heirs of Land owner and the builder which was fought in the High Court resulting in an Arbitration process lasting 3 years. The final Arbitration only mentioned that Mr. Sanjib Saikia is the owner of 7 flats in Geetanjali Heights. Of these 7 flats Mr. Sanjeeb Saikia has already sold 4 flats and out of these 4 flats, 3 owners have taken possession of the flats and are registered members of our society now (Final Arbitration).

In his appeal petition Shri Sanjib Saikia has mentioned the Power of Attorney executed by his father Dandidhar Saikia as POA 641/05. But from the foregoing discussion we find that the Power of Attorney executed by the father of the appellant bears a four digit number 6417/04 which was executed and registered in the year 2004. It is dated 10.10.2004 and registered on 04.11.2004 as revealed from the petition filed by the builder before the Arb. Tribunal.

From the above discussion it becomes clear that execution of Geetanjali Height Project started by the builder under the power and authority of the registered Power of Attorney No. 6417/04 was finally completed under the power and authority of the registered Power of Attorney executed by the appellant Shri Sanjib Saikia on 23.05.2014, the latter POA confirming and endorsing all acts, deeds or things done by the builder till the date of its execution on 23.05.2014. Therefore, regardless of the date of installation of the transformer for the purpose of Geetanjali Height and the 36 electric connections given to the flats/apartments all these are covered by the post facto validation accorded through the POA executed by Shri Sanjib Saikia. Inability of the APDCL authority to trace out the documents filed with the request for the transformer notwithstanding as it is not clear from the materials available on record also in whose share of land the transformer stands it is open to the appellant to furnish documents showing his right, title and interest over the piece/parcel of land on which the transformer stands to the authority concerned and seek remedial action. APDCL authority on the other hand will on their tracing out the documents take appropriate action as per the relevant rules and regulations.

In view of what has been discussed above I find no reasons to interfere with the Judgement and Order dated 11.01.2021 of the Consumer Grievance Redressal Forum, Guwahati in CP case No. 8/2020 and the appeal petition is therefore dismissed.

The appeal petition is accordingly disposed of.

Sd/-

Electricity Ombudsman