

E-Commerce Guidelines for Consumer Protection, 2019: An Attempt to Reign the E-Commerce Sector

written by Sindhuja Kashyap | September 30, 2019

The Department

of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution,

on August 02, 2019^[1] have issued

the e-commerce guidelines for consumer protection, 2019 ("Guidelines") in

order to safeguard the interest of the consumers. The Guidelines are open for views or comments from stakeholders and the deadline for such comments has, on

September 16, 2019, been extended from September 16, 2019 to October 31, 2019.^[2] The

Guidelines are only applicable to Business-to-Customer e-commerce entities.

The

Guidelines are also applicable to all B2C e-commerce entities involved in digital content products.

Key Highlights

In this article, we shall

discuss the salient features of the Guidelines as follows:

- E-commerce entity

The e-commerce entity has been defined as a company

or a foreign company, as defined in the Companies Act, 2013/1956 or an office,

branch or agency as covered under FEMA 1999, owned or controlled by a person, resident outside India and includes an electronic service provider or a partnership or proprietary firm, whether inventory or market place model or both and conducting the e-commerce business.

- General conditions for carrying out an e-commerce business

All e-commerce entities carrying

out or intending to carry out e-commerce business in India shall have to be a registered legal entity and shall be required to comply with the conditions mentioned in the Guidelines within 90 days. Further, the entities are required

to submit a self-declaration confirming compliance of the Guidelines to the department. The Guidelines mandates that no e-commerce entity shall have a promoter of key managerial personnel who has been convicted of any criminal offence, punishable with imprisonment in the last 5 years by any Court of competent jurisdiction. Further, it is mandatory for the e-commerce entities to

comply with the provisions of the Information Technology (Intermediaries guidelines) Rules, 2011 and in case of facilitation of any payments for sale, guidelines of Reserve Bank of India shall be complied with. All details about the sellers supplying the goods and services on an e-commerce platform (including identity of their business, legal name, principal geographic address, name of website, contact details, the products they sell) shall be displayed by an e-commerce entity on their website.

- Activities not to be undertaken by the e-commerce entity

The e-commerce entity shall not indulge in any unfair trade practice that may influence the transactional decisions of consumers in relation to products and services or influence the price of the goods and services. Further, the e-commerce entity shall not be indulged in falsely representing the customers or posting false reviews on their behalf. The quality or features of the goods and services shall at no point be exaggerated or misrepresented to the customers by the e-commerce entity.

- Liabilities of the e-commerce entity
 - Informed Choice: An e-commerce entity shall have an obligation to display all the terms relating to refund, exchange, warranty/guarantee, delivery and shipment etc. and such other information as may be required to enable a customer to make informed decisions. Further, all safety and health care information of the goods and services are always required to be duly advertised for sale.
 - No deception: An e-commerce entity shall ensure the images or information as displayed in the advertisement are always consistent with the actual goods or services and its features.
 - Payment Security: An e-commerce entity shall ensure that adequate information is provided regarding the methods of payment available and the security of the same, information regarding cancellations, refund, charge back options and any additional costs if applicable shall also be made available on the website.
- Personal Data: An e-commerce entity shall have the duty to safeguard and protect all personal data of the customers and shall ensure compliance of the Information Technology (Amendment) Act, 2008.
- Return of Product: An e-commerce entity shall not deny any return of goods if the return is being made due to delay in delivery, delivery of defective or spurious or wrong products and or deception from the product received with the advertisement. Further, all payments towards any accepted requests for refund shall be made no later than 14 days from the date of acceptance of such a refund request.
- Counterfeit Product: An e-commerce entity, upon receiving information either directly or indirectly, about any counterfeit product being sold on its platform, shall satisfy itself of the legitimacy of the information. Post due diligence, the e-commerce entity shall notify the seller and in the absence of any evidence of the genuineness of the product by the seller, it shall delist the product from its platform and notify its customers accordingly.
- Contributory Liability: E-commerce shall have the liability of all the products being sold on its platform that it assures or guarantees to be authentic and shall be guilty of contributory or secondary liability if such assurance or guarantee is found untrue or false.
- Liabilities of Sellers
 - Any seller selling or

advertising its product or services on an e-commerce platform shall have the following liabilities:

- To have a written contract with the e-commerce entity prior to such sale or advertisement.
- To provide all information regarding the contract with the e-commerce entity as required either by law or by any other similar regime;
- To provide both single figure total and also a break-up price for the goods or services being sold. Such a display of charges shall include an express display of all compulsory charges such as delivery, postage, taxes and handling and conveyance charge.
- To ensure compliance with Legal Metrology (amendment) Rules 2017 for pre-packaged commodities;
- To ensure that each consumer shall be mandatorily provided with the safety and health care warnings of the goods or services and also the shelf life of any product being provided at any physical point of sale. Further, the seller shall also be mandatorily required to provide the shipping and delivery policies for the customers.
- The seller shall at all times be responsible for all and any warranty/guarantee obligations with regard to the products/services being sold.
- The Seller shall ensure that there is clarity between itself and e-commerce entity, on the process of exchange, returns and refunds of goods and the cost incurred therein.
- Consumer grievance redress procedure
The Guidelines mandates that every e-commerce entity shall mandatorily publish on its website the name and contact details of the Grievance Officer. Further a clear mechanism is required to be stipulated on the website regarding the complaints and their redressal.
The Guidelines mandates redressal of the complaint within one month from the date of receipt of such complaint by the Grievance Officer. An e-commerce entity shall ensure that the consumers are provided with the facility to get their complaints by various methods such as vide email, over the phone or on the website. Each complaint shall have a unique complaint number and the same shall be provided to the respective customer for the purpose of tracking the status of their complaint. Guidelines state that the consumers shall be provided with transparent and effective consumer protection that is not less than the level of protection offered in other forms of commerce. Such a statement is vague and subject to varied interpretations by various entities, thereby increasing the probability of its misuse. Further, each e-commerce entity is required to provide a mechanism or system wherein any grievance redress mechanism shall be permitted to be converged with National Consumer Helpline.

Conclusion

The Guidelines seem to be in clear compliance with Rule 11 of Information Technology (Intermediaries Guidelines) Rules, 2011 ("Intermediary Guidelines"). While the Intermediary Guidelines fail to provide a time limit for redressal of a complaint and tracking of the status of each complaint, the Guidelines have taken a step ahead to ease the process for the consumers. These Guidelines once approved is likely to become part of rules to the Consumer Protection Act, 2019, thereby having better enforceability in the court of law.

While there already existed various similar governing laws for brick and mortar stores, new guidelines repeating the same could have been avoided by making adequate changes to the already existing law. However, it would be interesting to see how soon the Guidelines sees the light of the day and interpretation of the same by varied e-commerce entities.

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<https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Guidelines%20on%20e-Commerce.pdf>

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