

Impact of Consumer Protection Act, 2019 on E-commerce – The Law, The Rules and The Road Ahead

written by Smita Paliwal | August 13, 2020



E-commerce and Consumer Protection Act, 2019: Impact on the Consumer
'Transparency' and 'Accountability' are the fundamentals of the Consumer Protection Act, 2019 ("Act") that came into force on 20 July 2020. The Ministry of Consumer Affairs, Food, and Public Distribution notified a slew of Consumer Protection (E-commerce) Rules, 2020 ("Rules") under the Act for the growth of the e-commerce sector and protection of the right of the consumers.

This definition of the 'Consumer' has been broadened and various duties and liabilities have been cast upon e-commerce entities so as to bring the e-commerce sector under its ambit. The expressions "*buy any goods*" and "*hires or avails any services*" now include offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing."^[1]

The Rules cast various duties and liabilities upon e-commerce entities and sellers, and the same are as follows:

1. Duties of Seller on Marketplace:

- Sellers have the duty to maintain fair trade practices and not to get involved in any kind of unfair trade practice which includes misrepresenting themselves as a consumer and posting fake reviews about a product.
- They cannot deny their duty to take goods back while offering goods through market place entity and cannot withdraw or discontinue services purchased or agreed to be purchased.
- The duty to reimburse the consideration paid by the consumers is also cast upon the seller, if the goods or services are deficient or defective or of different quality as compared to what was shown in images or are delivered late from the scheduled time. However, the seller is not responsible if the late delivery is due to unavoidable causes.
- The seller should make a written contract with the concerned marketplace e-commerce entity to undertake or solicit such sale or offer.
- It is mandatory for a seller to appoint a grievance officer for consumer grievance redressal and to make sure that the said officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint
- The seller is required to ensure that the advertisement about characteristics, access and usage conditions of the goods and services are correct and consistent with the actual product..

- Seller is also under an obligation to maintain transparency with the respective e-commerce entity by providing it its legal name, principal geographic address of its headquarters and all branches, the name and details of its website, its e-mail address, customer care contact details such as fax, landline, and mobile numbers and where applicable along with its GSTIN and PAN details.
- Seller is prohibited from manipulating prices as he is now liable to provide the e-commerce entity on its platform or website: (a) all contractual information required to be disclosed by law; (b) total price in a single figure of any good or service, along with the breakup price for the good or service, showing all the compulsory and voluntary charges such as delivery charges, postage and handling charges, conveyance charges and the applicable tax, as applicable.
- Seller is required to disclose all the relevant information which is required by the consumer to decide on purchasing a product like the country of origin, the name and contact numbers, and designation of the grievance officer for consumer grievance redressal or for reporting any other matter, name and details of the importer, and guarantees related to the authenticity or genuineness of the imported products.

2. Duties of E-commerce

- Every e-commerce entity must be incorporated under the Companies Act, 1956 or the Companies Act, 2013 or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 or an office, branch, or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iii) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999 and the entities are required to appoint a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder. e-commerce entity shall not engage itself in any unfair trade or malicious practice, whether in the course of business on its platform or otherwise.
- They must establish adequate grievance redressal mechanisms and a grievance officer shall be appointed who shall ensure acknowledgment of the consumer complaint within 48 hours and the company shall redress the complaint within one month from the date of receipt of the complaint.
- It shall provide the following information in a clear manner on its platform, which can be easily visible by the consumers: legal name of the e-commerce entity; principal geographic address of its headquarters and all branches; name and details of its website; and contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- It cannot ask for cancellation charges on consumers canceling after confirming purchase unless similar charges are also borne by the e-commerce entity and it has also been prohibited from manipulating the price on its platform and from discriminating the consumers of the same class.
- If any e-commerce entity offers imported goods or services for sale, it has to mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.
- Every e-commerce entity must endeavor to become a partner in the convergence process of the National Consumer Helpline of the Central Government.
- Every e-commerce entity has to make their payment process effective towards

accepting refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.

- All e-commerce entities have to record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, and not otherwise.

3. Liabilities of Marketplace E-commerce Entities[2] and Inventory E-commerce Entities[3]:

A marketplace e-commerce entity that seeks to avail the exemption from liability under sub-section (1) of section 79 of the Information Technology Act, 2000 (21 of 2000) shall comply with sub-sections (2) and (3) of that section, including the provisions of the Information Technology (Intermediary Guidelines) Rules, 2011.

- Every marketplace e-commerce entity is liable to make sure that sellers are selling accurate products on their platforms. They must ensure that appearance and feature, quality, colour of product shown are consistent with the original product.
- Every marketplace e-commerce entity has a duty to provide relevant information on its platform where a consumer can easily see it. Information includes details about the sellers offering goods and services, including the name of their business, whether registered or not, their geographic address, customer care number, any rating or other aggregated feedback about such seller. Also, the entity is responsible to provide the consumer with any information that can be useful for him to contact the seller, in case any written request comes from the consumer.
- A ticket number has to be allotted to each complainant so that he/she can track the status of the complaint. Any relevant information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information which will be useful for consumers to make a final decision to purchase a product shall be given to him.
- Payment options must be made clear to the consumers and all the charges and fees, including the procedure of cancelling payment must be transparent to the consumer. The terms and conditions mentioned on the website must include information to determine the relationship of the entity with the seller.
- If any e-commerce entity vouches for the authenticity of any particular product or service of seller either explicitly or implicitly, then it shall be liable with respect to that particular product.

4. Other additions in the Act applicable on E-commerce Entities and Sellers:

- Jurisdiction of Filing Complaints: Territorial and Pecuniary jurisdiction for filing complaints has been enlarged. Now, a complainant can file a complaint from anywhere in the country unlike before. Consumers will be able to file complaints electronically at no fee for cases upto Rs. 5 lakhs at District Commission and can also seek hearing through video-conferencing. Litigation process has been simplified to make it beneficial for the consumers. Adequate grievance redressal mechanism shall be established and a grievance officer shall be appointed who shall ensure acknowledgment of the consumer complaint within 48 hours and company shall redress the complaint within one month from the date of receipt of the complaint, trackable by allocated ticket number.
- Product Liability : The manufacturers and sellers of products and services

have been made liable for any harm caused by the product to the consumers, subject to different conditions and exceptions provided with respect to the liability of manufacturers and sellers respectively. One of the exceptions provided is that a product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.^[4] Now, what will be considered as 'obvious' and 'common' can differ from consumer to consumer.

- **Mediation Cells:** Mediation cells are to be established to help aid the parties to arrive at the settlement prior to filing of the complaint. The complaint will be referred by a Consumer Commission for mediation. The Ministry has also notified the Consumer Protection (Mediation) Rules, 2020 that provides a list of cases unsuitable for mediation. Mediation process can be very helpful for both consumers and e-commerce entities as it will simplify the procedure for them and will be less time consuming. If at the end of the process, the issue is resolved, then the entire amount of application fee will be reimbursed to the complainant that will encourage consumers to settle their matters through mediation and the burden of court will get reduced which will eventually lead to effectiveness.

Conclusion

"Consumer is the King"- the new Act has made this saying meaningful by strengthening the rights of the Consumer, making the e-tailers more accountable and providing transparent redressal mechanism that in turn will aid the consumers in making an informed decision in buying products and availing services.

Effective enforcement of strict regulations along with penalties and punishment will act as deterrent and the manufacturers and sellers will refrain from devising fraudulent and manipulative tactics. Convenient grievance redressals will encourage more consumers to do transactions online and help enhance the faith in e-tailers that will eventually lead to growth of the sector and enhanced profits. Having said that, the time will unravel whether the new Act and Rules stand the test of time.

[1] Sec 2(7) Explanation (b), Consumer Protection Act, 2019

[2] 3(g) of Rules - an e-commerce entity that provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.

[3] 3(f) of Rules - an e-commerce entity that owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single-brand retailers and multi-channel single-brand retailers

[4] Section 87(3), Consumer Protection Act, 2019

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