



The Federation of Hotel & Restaurant Associations of India

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21st July 2021

Shri Anupam Mishra

Joint Secretary

Department of Consumer Affairs

Ministry of Consumer Affairs, Food and Public Distribution.

Government of India

Sub: Suggestions on the proposed amendments to Consumer Protection (E-Commerce) Rules, 2020

Dear Sir,

1. This is in reference to the notification issued by the Department of Consumer Affairs on 23rd June 2021 inviting suggestions on the proposed amendments to Consumer Protection (E-Commerce) Rules, 2020.

2. At the outset, we would like to express our sincere gratitude to the Department of Consumer Affairs to acceding to our request and extending the time to submit the suggestions by 21st July 2021.

3. The Federation of the Hotel & Restaurant Associations of India (**FHRAI**) is the apex body and the voice of hospitality industry in India that represents 50,000 hotels and 5,00,000 restaurants from all across the country.

4. The FHRAI welcomes the step taken by the Government in proposing amendments to the Consumer Protection (E-commerce) Rules, 2020. There have been several complaints against widespread cheating and unfair trade practices being observed in the E-Commerce ecosystem by the consumers as well as by the hospitality industry. The proposed amendments would go a long way in redressing such grievances as well as to protect the interest of consumers and encourage free & fair competition in the market. We also welcome the proposed amendments aimed to bring transparency in the E-Commerce ecosystem and further strengthen the regulatory regime.

5. FHRAI would like to assist your good self by highlighting the various issues which have arisen in the past with e-commerce entities and would like to make suggestions for further amendments in the Rules to ensure that the Rules framed are watertight and covers all duties and responsibilities of sellers as well as e-commerce entities which are clearly delineated so that the consumer is aware who is the service provider and is not made to run from pillar to post in case of deficiency in service.

6. Our views/comments/suggestions to the proposed amendments are as follows:

I. Definition of market place E-Commerce entity

7. Rule 3(j) defines market place e-commerce entity as follows:

“marketplace e-commerce entity” means an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.

8. You good self is aware that so far as hospitality and travel industry is concerned, the following e-commerce entities play a big role in the present market condition:

- (i) Online Travel Agency (OTA) like Make My Trip
- (ii) Food Service Aggregators (FSA) like Zomato
- (iii) Table Reservation Services like Dine Out
- (iv) Event ticketing platforms like book my show

Our Suggestions

9. Though they would all be covered by the definition but for consumers interest and protection, we suggest that it is made explicitly clear in the definition itself so that nothing is left for any dispute in the future as to whether these entities are covered within the definition of Market place E- Commerce entity. Hence, we suggest that an explanation may be added to Rule 3(j) to read as follows:

“Explanation: market place e-commerce entity shall include food service aggregator, online travel agency, dining reservation platforms, event ticketing platforms and similar such entities.”

II. Fall back liability clause

10. Proposed Rule 3(d) defines fall back liability as follows:

(d) “Fall back liability” means the liability of a marketplace e-commerce entity where a seller registered with such entity fails to deliver the goods or services ordered by a consumer due to negligent conduct, omission or commission of any act by such seller in fulfilling the duties and liabilities in the manner as prescribed by the marketplace e-commerce entity which causes loss to the consumer;

Our views/comments

11. In our view this is a very important amendment which has been proposed and the same needs to be brought on the statute book. The same is hugely in the interest of the consumer who would be ensured that he is not required to search for the entity who is to be sued for deficiency in service. The consumer will have his remedies against the entity on whose platform he had transacted. This would also ensure that market place e-commerce entities act responsibly when providing services to a consumer.

III. Sharing of information pertaining to consumer

12. The proposed Rule 5 (14)(e) provides as follows:

(14) No e-commerce entity shall

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(e) make available any information pertaining to the consumer to any person other than the consumer without the express and affirmative consent of such consumer, no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes;

Our views/comments

13. We are of the view that this clause may not be required in the Rules. This is for the reason that the Personal Data Protection Bill, 2019 has been introduced in Lok Sabha and that statute once enforced would lay down the appropriate parameters under which data protection authority would decide about the sharing of data as per the vulnerability of e-commerce user's data. Thus, to ensure that there is no conflict between the two legislations, it would be appropriate that Consumer Protection (e-commerce) Rules does not deal with this aspect and leave it to be dealt with under the Special legislation which is being framed specifically on protection of data.

IV. Duties and Liabilities of e-commerce entities and market place e-commerce entity

14. Rule 5 and 6 of the Consumer Protection (e-commerce) Rules provides for duties of e-commerce entities and liabilities of market place e-commerce entities respectively. The proposed amendments seek to introduce more duties and liabilities which is a welcome step as the same are based on past experiences and are in interest of consumer protection. These Rules provide for various things which these entities have to do to ensure that the consumer rights and interest are protected.

15. FHRAI would like to highlight, out of past experiences, certain other issues which are faced by consumers while dealing with e-commerce entities and market place e-commerce entities and which also needs to be provided for in the form of duties and liabilities of the said entities so that their duties and liabilities are clearly and exhaustively defined in these Rules.

16. The issues which are generally faced by consumers while dealing with e-commerce entities are as follows:

- a) **Problems due to overbooking:** Consumers sometimes faces a problem due to overbooking mistakes of OTAs. The e-commerce entity (OTAs) should be made responsible for such acts of unfair business practices of OTAs.
- b) **Problems arising due to inability of FSAs / OTA to service the customers:** At times, the OTAs and FSAs show on their platforms that the restaurants are not operating and rooms sold out, but when in fact, they are

unable to service their customers thereby causing great trouble to both the customer and the service provider. In such situations the consumers cannot be aggrieved against the hotels and restaurants but instead the accountability should be vested on the OTAs and FSAs who are the ones who can control visibility and inventory.

- c) **Problems arising due to ranking and rating done by OTAs and FSAs:** OTAs as well as FSAs define and provide their own ranking and rating for Hotels and Restaurants which confuses guests and since this is not in the control of hotels and restaurants, they cannot be blamed for the incorrect perception based on these ratings provided.
- d) **Problems due to guest reviews controlled by OTAs and FSAs:** Guest reviews are provided based on individual events and experiences and thus no guest should base their expectation on these reviews, make comparisons, feel disappointed and then file complaints. These reviews are totally controlled by OTAs and FSAs and they also exclusively control the right to remove reviews they find are suspect and fake. Therefore, in case a consumer comes into the hotel with an expectation based on the said reviews and if their expectations are not met, the Hotels should not be held responsible as they do not control the reviews on these OTA platforms, Thus OTAs and FSAs should be made responsible for fake reviews.
- e) **Problems due to unilateral marketing offers/discounts:** Both OTAs and FSAs are known to make several independent marketing offers, none of which marketing text explaining discounts, cashbacks, promotions and schemes are EVER driven or explained by our business thus holding our business responsible for misrepresentation and confusion is wrong. The hotels and restaurants are only responsible for sales made through their own web sites and Apps only. Moreover, any schemes, discounts, deals must be in consonance with the agreement entered into between the OTA and the seller.
- f) **Problems of illegal and unauthorized accommodations:** It is often seen that OTAs host illegal and unauthorized accommodations on their portals which poses a threat to consumer safety. Thus, there should be guidelines to ensure that the OTAs do not host illegal or unauthorized accommodations on their portals to ensure consumer safety.
- g) **Problem of hidden charges:** Both OTAs and FSAs often indulge in double dipping by inflating charges payable by consumers through levies raised under different names and pretext and which consumers are often confused to think that the same are levied by Hotels and Restaurants. These charges include charges like Convenience fees, Service charges (not levied by the business), Delivery charges, Packaging charges (not levied by the business), Transaction fees (to offset credit card commission), Tips (supposed to be paid to their Riders), Donations (supposed to be collected for different charities) etc. None of these charges are levied by the hotel or the restaurants and the consumers are made to believe that the charges are levied by the hospitality industry. This misrepresentation and confusion are wrong and should thus be stopped.

- a) **Problem of collection of wrongful GST:** OTAs levy and collect GST from consumers. The Hotel room tariff are based on slabs and as it is often seen that OTAs increase or decrease the agreed rate as per their convenience. In the process of increasing and decreasing the room tariff, the OTAs, often collect incorrect GST amounts applying wrong GST percentage and under no circumstances is the seller responsible for this oversight on the part of these platforms. Thus, OTAs should be made responsible to ensure that correct amount of GST is collected from the consumers.

Our Suggestions

17. In view of the above, it is our suggestion that the following clauses may be added as duties and liabilities of e-commerce entities and market place e-commerce entities:

- (i) No e-commerce entity or market place e-commerce entity, as the case may be, shall indulge in overbooking of goods or services for which it would be solely responsible.
- (ii) E-commerce entity or market place e-commerce entity, as the case may be, shall be accountable for their inability to service their customers
- (iii) E-commerce entity or market place e-commerce entity, as the case may be, shall be entirely solely responsible for the ranking and rating it gives to the goods and services and thus should take adequate care while doing so to ensure that the consumer is not misled.
- (iv) E-commerce entity or market place e-commerce entity, as the case may be, shall be entirely responsible for the reviews given by persons on their website and shall take adequate care to weed out the fake reviews to ensure that the consumer is not misled.
- (v) E-commerce entity or market place e-commerce entity, as the case may be, shall not offer any scheme/discount on behalf of the seller to a consumer unless it has a specific written contract with the seller for offering such scheme/discount and the information about such contract shall be provided to the consumer.
- (vi) E-commerce entity or the market place e-commerce entity shall be entirely responsible for their own independent marketing offers given to the consumers which offers have not originated from the product seller or the service provider.
- (vii) E-commerce entity or the market place e-commerce entity shall be obliged to provide accommodation listing services only to legitimate business which operates based on local and central licenses and fees paid.
- (viii) E-commerce entity or the market place e-commerce entity shall clearly show the charges levied by them and also make them optional in nature and preferably have an OPT IN clause to pay for a few (currently

some of them have an OPT OUT clause and also not easy to notice or remove).

- (ix) E-commerce entity or the market place e-commerce entity shall ensure that correct GST is collected from the consumers.

V. Duties of sellers on market place

18. Rule 7 provides for duties of the sellers on market place. In this regard as well we would like to point out certain issues which normally arise and which needs to be provided for to ensure more clarity. These are as follows:

- a) **Complaints related to food packaging:** Complaints related to food packaging can also be due to mishandling of riders and in spite of best efforts to seal packages by the restaurants, riders are also caught stealing and reducing packed quantities.
- b) **Complaints of a subjective nature:** On many occasions, complaints about the services being offered by the hospitality sector are of subjective nature such as complaint about deficiency in ambience, taste, quality, quantity, price, value for money and any such subjective and unmeasurable parameter that is part of the hospitality business. Complaints of that nature subjective nature cannot be entertained by the sector as it merely expresses a personal opinion.
- c) **Delays in food delivery:** Delays for food sold on aggregator platforms can be also due to production delays but more often than not is due to deficiency in ridership services which are purely taken care of by aggregators.

Our Suggestions

19. In view of the above issues, it is our suggestion that in Rule 7(3) at the end the following words and provisos may be added:

“or due to delay on the part of the ridership service provided by the aggregators.

Provided that complaint about ambience, taste, quality, quantity, price, value for money and any such subjective and unmeasurable parameter shall not be considered as defect in goods or service.

Provided further that sellers must ensure that packages are sealed before they are handed over to the aggregators for supply so that any mishandling thereafter can be checked and responsibility fixed on the aggregators.

VI. Agreement between seller and e-commerce entity

20. The Rule 7(4) provides as follows:

(4) Any seller offering goods or services through a marketplace e-commerce entity shall:

(a) have a prior written contract with the respective e-commerce entity in order to undertake or solicit such sale or offer;

21. The hotels and restaurants do enter into written contracts with e-commerce entities. However as stated above these entities sometimes make marketing offers to consumers on their own without taking the consent of the seller and without there being any agreement between the seller and e-commerce entity. Thus to provide for such situation and protection of consumer interest an appropriate provision is required to be made that such offers given by OTAs should be under a specific contract with the seller which should be intimated to the consumer.

Our suggestion

22. In view of the above, we suggest that the following clause (aa) may be added after Rule 7(4)(a)

(aa) apart from the above prior written contract, enter into specific contract with respective e-commerce entity as and when any scheme/discount or any other offer is given by such entity to a consumer on its platform.

Provided that the e-commerce entity shall be solely liable to the consumer if any such offers are made without entering into specific contract with the seller.

VII. New Rule 10

Our Suggestion

23. A new Rule 10 may be added to the Rules which provides as follows:

“The sellers shall not be made liable under the Act if the deficiency is on the part of the e-commerce entity or market place e-commerce entity.”

24. We would hereby request you to favourably consider the above said suggestions of the hospitality industry and amend the Consumer Protection (E-Commerce) Rules, 2020 for ensuring the rights and privileges of all stakeholders. We would also request for a personal hearing so that we can better explain the above points and also answer any queries or provide clarifications if required.

With best regards,



Gurbaxish Singh Kohli
(Vice President)