

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)



Consumer Protection Council, Rourkela (Regd.)

A pioneer in taking up class complaints since 1985

Office of the Chief Mentor

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An aware Consumer is an Asset to the Nation

CM/E-Comm/13/2021-22

4th July 2021

Shri Anupam Mishra
Joint Secretary
Department of Consumer Affairs
Ministry of Consumer Affairs, Food and Public Distribution
Government of India
NEW DELHI.

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

Ref: Notification No. J-10/3/2018 – CPU (Computer No. 16082).

Sir,

We, as the representatives of consumers do appreciate the initiative of the Department of Consumer Affairs, GoI, in notifying the much-awaited Consumer Protection (E-Commerce) Rules, 2020, which will go a long way in safeguarding the consumer interests.

While the Rules mandate the E-Commerce entities to reveal several necessary information, with which the consumers can make an informed choice of the goods or services that they want to procure, but also give them the teeth to appropriately take up their grievances, if any, with the concerned officials of the E-Commerce entity. While on the other hand, the E-Commerce companies are required to appoint and publicise the officials responsible, so that they monitor and redress the grievances of the consumers. Further, the Rules provide for the E-Commerce entities to be a part of the National Consumer Helpline of the Central Government, which is most welcome.

To further protect the consumer interests, an addition to the liabilities of the Sellers/E-Commerce entities is suggested as below:

A. E-Commerce entities when offering certain items which are used in household modifications and replacement inventories like commodes, water pipes, taps, wash basins, tiles, etc., supply defective material or those which is/are not as per specifications, can cause immense hardship to the consumers. This is quite relevant especially when such repairs/replacements are undertaken, while the house is under occupation. Though, the e-commerce entity might agree for cancellation or replacement, the household will be hardly in a position to wait for such replacements to arrive, as such supplies could easily take up to 10 – 15 days. Similarly, any deficiency or shortcoming in the service(s), which are incidental to an occasion, like celebration/event, which needs to be conducted on a particular date and time, can affect the individual concerned, financially, physically and mentally. Hence, to make the seller and the e-commerce entity more responsible for the product or the service that they supply, there should be a penalty clause, making it mandatory for the seller/e-commerce entity to refund double the cost of the item/service, ordered/supplied, so that the concerned consumer can get at least some compensation for the running around that he has to do to procure/arrange the required item(s)/service(s) in the eleventh hour, at a higher cost, and may be even by compromising on his requirements.

A sub-rule can be introduced as under:

7. Duties of sellers on marketplace.

(6) Any seller offering goods or services through a marketplace e-commerce entity, or through its own e-commerce portal, which are required to be used in the maintenance or modifications of the existing household (occupied house), like toilet, which include commodes, water pipelines, wash basins, taps or such services which are incidental to an occasion or event, fails to supply or supplies materials or services, found defective or deficient, are liable to pay twice the amount of the charges paid/promised to be paid or the actuals spent, whichever is higher, by the consumer.

B. There are a number of errors that have crept into the draft, in the numbering, which need to be corrected. The details have been furnished in the following table: (Proposed additions in ‘blue’ and deletions in ‘red strikethrough’.)

Sl. No.	EXISTING	CORRECTION	NOTE
1	Clause 2.(2) “.....e-commerce entity which is not established in India.....”	“.....e-commerce entity which is <u>or</u> not established in India.....”	The Rules should cover all the e-commerce entities, whether established in India or not, but offering services to Indian consumers.
2	3. Definitions. (k) (ii) “.....seller claiming under it; by misleading consumer to the prejudice of e-commerce entity, or to the prejudice of anyone claiming under it;”	“by misleading consumer to the prejudice of e-commerce entity, or to the prejudice of anyone claiming under it;”	Appears to be confusing, as the first sentence itself conveys the meaning of the intent of “misrepresentation”.
3	5. Duties of e-commerce entities. (1) “.....Limited Liability Partnership Act, 2008 (6 of 2009) an office, branch or agency.....”	(1) “.....Limited Liability Partnership Act, 2008 (6 of 2009) <u>or</u> an office, branch or agency.....”	Omission of <u>or</u> , appears to be a typographical error.

4	5. Duties of e-commerce entities. (2)(e)	To be deleted.	Same clause has been repeated under 5.(3) and is in general applicable to all e-commerce entities.
5	5. Duties of e-commerce entities. (5)(c) “.....in sub-rule (2) of rule 3.”	(5)(c) “.....in sub-rule (2) of rule 3 <u>5</u> .”	Appears to be a typographical error, as 3. Relates to “Definitions”.
6	5. Duties of e-commerce entities. (6) “.....grievance officer referred to in sub-rule (4) acknowledges.....”	(6) “.....grievance officer referred to in sub-rule (4)(5)(c)acknowledges.....”	Probably, it is a carry over of the old numbering. Sub-rule (5) only deals with Grievance Redressal Mechanism.
7	6. Liabilities of marketplace e-commerce entities. (3)(e) all information provided to it by sellers under sub-rule (5) of rule 6; and	(3)(e) all information provided to it by sellers under sub-rule (5)(2)of rule 6; and	Appears to be a typographical error, as only sub-rule (2) deals with providing of all relevant information by the sellers.

As required, I am sending these views/comments/suggestions, for further necessary action.

Thanking you,
Yours sincerely,

(B.VAIDYANATHAN)
CHIEF MENTOR
CONSUMER PROTECTION COUNCIL, ROURKELA
CHENNAI 600061

Subject: Thank you for the newsletter

Most respected Brother Shri B. Vaidyanathanji,

Greetings from us to you and your family, we hope and pray that you and your family members are absolutely fine.

By this email, we would like to inform you that on June 23, 2021, we received the 'Advantage Consumer' monthly Newsletter issue of June 2021. After reading it thoroughly we found the Newsletter to be very informative and all the case studies are complicated which makes it interesting to study and learn about it. Through this Newsletter, we can help consumers in a better way. Please keep sending the monthly News Letter to the below-mentioned address regularly, I and my whole team loved reading this issue and are awaiting many more. We hope for your kind cooperation and support in this regard and we eagerly await your positive response in this regard.

Thank you,

SMT. RAMABEN R. MAVANI, Ex-M.P. (Lok Sabha)
PRESIDENT,
RAJKOT SAHER JILLA GRAHAK SURAKSHA MANDAL,
Rajkot-360001, Gujarat

Reply letter to Smt. Ramaben from our Chief mentor

Respected Behen ji,

It was a great pleasure to receive your mail. In a small way, we are keeping our commitment to create awareness among the consumers going through this monthly newsletter “**Advantage Consumer**”. Your words of encouragement will go a long way in motivating our team, at Rourkela. It will be our endeavour to mail this monthly newsletter to activists like you, who appreciate our work and are committed to consumer welfare.

Please convey my regards to Respected Ramji Bhai, greetings to your family and best wishes to your team of volunteers.

Regards,

B.VAIDYANATHAN
CHIEF MENTOR
CONSUMER PROTECTION COUNCIL, ROURKELA
CHENNAI

Continue from the previous issue (i.e. June 2021) ...

DTDC Courier penalised for non-delivery of consignment.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. 3124 OF 2017

(Against the Order dated 21/08/2017 in Appeal No. 638/2016 of the State Commission, West Bengal)

1. MANAGER, DTDC EXPRESS LTD. (FORMERLY KNOWN
AS DTDC COURIERS & CARGO LTD.) & ANR.

404-405 VIP ROAD RAGHUNATHPURA, DTDC BHAWAN
ZONAL OFFICE EAST VIP ROAD RAGHUNATHPUR
NAGUIATI

KOLKATA – 700059. WEST BENGAL

.....Petitioner(s)

Versus

RASHMI THACKER

5A/1A LORD SINHA ROAD
KOLKATA. WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. PREM NARAIN, PRESIDING MEMBER

Dated : 06 Aug 2020

ORDER

is why the District Forum has only allowed the compensation and not ordered the cost of the consignment to be paid. However, the State Commission has also awarded the cost of the consignment and has observed as under: -

“The essence of the bone of contention, i.e., non-delivery of consignment is not in dispute. It appears from the copy of Tax Invoice that the complainant sent goods worth Rs.60,676/- through the OP Courier after paying due service charge for this purpose. As a carrier, the OP Courier Company was duty bound to ensure safe and timely delivery of the consignment to the addressee, which it could not ensure. Therefore, there is no reason, why a hapless consumer should bear the brunt of laxity on the part of the service provider for which they charge a consumer through the roof. Accountability can only be restored if we show zero tolerance towards acts of laxity. In my considered view that the OP should be held liable

12. From the above, it seems that the District Forum has given a finding that the consignment had reached the consignee though the same may have reached late and that *to make good every penny of the loss suffered by the complainant.*”

13. The State Commission has mentioned that the non-delivery of the consignment is not in dispute, though the District Forum has given a clear observation that the consignment was received by the consignee. The State Commission has not mentioned whether the State Commission has found the finding of the District Forum as wrong and on what basis. The State commission has also not given any finding that the consignment did not reach the consignee. It is also very strange that the opposite party has also not mentioned in written statement whether the consignment was received by the consignee or not. Thus, the position in respect of the delivery of the consignment was doubtful and therefore this Commission vide its order dated 3rd April 2019 gave time to the learned counsel for the petitioner to file any document or any other proof for delivery of the consignment to the consignee. The learned counsel had stated that he will seek instruction in this regard, however, nothing has been filed by the learned counsel for the petitioner and therefore the conclusion needs to be derived that the petitioner does not have any proof to establish that the consignment was delivered to the consignee. The consignment note reads as under: -

“Consignment note for 5 kg & above or 1 kg & above when paired with secure pack in Lite service.”

14. This is a Consignment note for 5 kg and above or 1 kg and above when paired with secure pack in Lite service. However, no weight is mentioned on this consignment note. There are columns for description of content and value of goods. However, all these columns are blank. The column of total value of goods in rupees is also blank. In column number 5 declared value for courier has to be mentioned in rupees, however, the same is also blank.

15. This consignment note is not signed by the sender though there is a specific space mentioned for the signature of the sender. It is thus clear that the petitioner opposite party has not even completely filled up this consignment note for the reasons best known to them. Had the value been quoted in this consignment note, the delivery persons of the opposite party would have given more attention to the correct delivery of the consignment. It is nowhere mentioned in the consignment note that these columns are to be filled only if insurance is taken. Therefore, in my view, the petitioner has been deficient in completing the consignment memo as per the actuals. In a similar case where mobile sets of about Rs.8.00 lacs were sent by the same courier but did not reach the consignee, this Commission in **Ashish Verma Vs. DTDC Courier & Cargo Limited &Ors., RP No.886 of 2015, decided on 06.8.2018** has observed the following: -

500/- as per that policy. Clearly, there is no insurance taken by the complainant and as per the version of the OPs, even the risk coverage policy of the OP was not taken by the complainant, though the complainant has stated that he never denied paying for the insurance and whatever money was asked, he had paid the same and he was under the genuine impression that risk cover was already paid for. So far as the liability of the OPs with respect to loss or misplacement of the two packets is concerned, as per the terms and conditions that is rightly assessed by both the fora below as Rs.500/- only. But the question of deficiency in service has not been considered by any of the fora below. The deficiency is not only in respect of loss of the packets; however, the deficiency is also in the processing of the receipt, dispatch and delivery of these packets. It is seen from the booking receipt/risk coverage consignment note that most of the columns are not filled by the OPs and it only mentions five packets. On the right-hand side of this note, following is mentioned:

“100% money back guarantee.

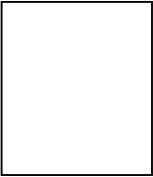
Use our Assured Second Business Day Delivery Service to place Far & Wide Across the Country”

10. The OPs have not even returned the fee paid to the OPs by the complainant as per this promise when the items were not delivered. This shows that the OPs are not even honouring their own commitment which is printed on this note. Moreover, it is seen that in this booking receipt/Risk Coverage Consignment Note, most of the columns are blank and no details of the packaged boxes have been given and the claim column relating to value of box has been left blank. It is also not clear that if risk coverage was not there then why risk coverage note was issued to the complainant. If this is just the booking receipt, then why the amount charged is not mentioned in this document.

It seems that the OPs have not filled up this form completely to avoid their liability in future. So, it means that their intentions were not good and their employees may be involved in the whole incident. Thus, this is clearly an unfair trade practice which has been adopted by the respondents/ OPs and even if this is due to mistake of some employees of the OPs company, the company would be liable for the same on the principle of vicarious liability. Due to this unfair trade practice, the complainant has suffered and he has not been able to recover the cost of the consignment from the OPs. Thus, the complainant is required to be compensated for this unfair trade practice adopted by the respondents/OPs. In the facts and circumstances of the case, I deem it appropriate to allow a compensation of Rs.1 lakh to be paid by the respondents/OPs to the petitioner/complainant for this unfair trade practice. The total cost of the misplaced consignments cannot be allowed as compensation because the complainant has also been negligent in not getting the form filled up by the OPs with all the details and he also did not check it at the time of booking the consignments. The value of cartons is not proved on the basis of these receipts/risk coverage note.”

16. On similar lines, in the present case, I deem it appropriate to allow a compensation of Rs.30,000/- (rupees thirty thousand only) along with interest @6% p.a. from the date of filing complaint till actual payment.

17. Based on the above discussion, the revision petition no.3124 of 2017 is partly allowed and the petitioner is directed to pay Rs.30,000/- along with interest @6% p.a. from the date of filing the complaint till actual payment. As interest is being awarded, no justification is there for separate compensation of Rs.20,000/- and this part of the State Commission’s order is set aside. Cost of litigations of Rs.1,000/- is enhanced to Rs.5,000/-. The orders of the flora below stand modified accordingly. This order is to be complied by the petitioner/opposite party within a period of six weeks from the date of receipt of this order.

<p>Editor : Sri B Pradhan Editorial Committee : Sri A K Goswami Sri Rajib Kumar Nayak Sri A Samantray Sri Amitava Thakur</p> <p>Circulation Manager : Sri B.D. Tripathy</p> <p>Remittance for subscription /donation may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7,Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of</p> <p>‘CONSUMER PROTECTION COUNCIL, ROURKELA’. For tariff and other details regarding advertisement, contact Editor</p>	<p>ADVANTAGE CONSUMER ENGLISH MONTHLY</p> <div style="text-align: right; margin-right: 50px;">  </div> <p style="text-align: center;">July 2021</p> <p>To _____ _____ _____</p>
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