

**BEWARE, AGGREGATORS.**



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We are more connected and dependent on each other than ever before. Many services and products available in the market are joint and collaborative efforts of more than one parties. Aggregators have made many services and products available at the click of a button. This has led to a significant rise in the usage of e-commerce portals by consumers.

The liability of aggregators has been debated since many years especially in cases wherein the products or services delivered are found to be defective or deficient. Generally, aggregators provide a platform or a marketplace and do not exercise much control over the goods sold and services rendered by the sellers on the platform. Thus, platforms provide wide disclaimers and stringent clauses that shift the responsibility of the quality of products and services and hold suppliers and service providers responsible.

However, liability cannot be determined by the terms agreed amongst the parties alone and the laws governing the relationship play an important role. In these cases, liability will be determined through the applicable laws including Consumer Protection (E-Commerce) Rules, 2020 (Rules). The compliance requirement under these Rules was explained in one of our earlier posts [here](#).

This note analyzes some recent cases which fasten liability on the aggregator and another instance where an exception was made.

Judgement	Context of the dispute and relevant Contentions	Decision of the Consumer Forum
<i>Kavita Sharma vs Uber India Systems Private Limited</i> <sup>2</sup>	Negligence of the driver that delayed the passenger ultimately leading to the passenger missing the flight.  Respondent (Uber) contended that the drivers are independent parties.	Aggregator held liable and a compensation of Rs. 20,000 was awarded to complainant on 25 <sup>th</sup> August 2022.
Baglekar Akash Kumar vs Paytm and Uni One India Pvt Ltd <sup>3</sup>	Country of origin was not mentioned at the time of sale on the portal under product information. Respondent (PayTm) contended that it was an intermediary and a platform, and thus not responsible.	Consumer Forum rejected the contention and a compensation of Rs. 15,000 was awarded to the complainant in October 2022.
Shaik Umar Farooq v. Flipkart Internet Pvt Ltd & Anr <sup>4</sup>	The complainant was charged Rs. 70 more than the MRP of each packet of Refined Sunflower Oil pouch. Respondent (Flipkart) contended that it had a limited role to play as a platform and that it was wrongly impleaded in the pleadings.	Respondents were held liable and ordered to pay Rs 50,000 as compensation and Rs 3000 as costs along with returning Rs. 140 (the excess charges refunded) on 26 <sup>th</sup> July 2022.
Flipkart Internet Private Limited vs. State Of U.P. And 3 Others <sup>5</sup>	Complainant had ordered a laptop on Respondent(Flipkart) but when the laptop was delivered, a processor of another brand was found on the laptop. Respondent(Flipkart) contended that it was an intermediary and thus on a different footing being only facilitator of the exchange of information or sales.	Criminal complaint was set aside by the High Court on 17 <sup>th</sup> October 2022.  Aggregator was held not responsible.

Let us examine the cases:

### ***Kavita Sharma vs Uber India Systems Private Limited***

Under this case, the complainant alleged that the negligence and delayed arrival of the driver had led the complainant to miss her flight. The complainant had booked an Uber cab at 3.29pm on June 12, 2018 to take a flight. In her complaint the complainant stated that:

- The driver reached her residence 14 mins late;
- The driver failed to begin the ride on time and also took a longer route to fill CNG.

The complainant missed her flight and was forced to take the next one at her own expense.

Respondent (Uber) claimed that:

- It was merely a cab aggregator providing a software on the smartphone which was used to connect drivers to their end users;
- All drivers work as independent contractors and aren't employed by them.

The Consumer Forum held the cab aggregator responsible for the driver's negligence and directed Respondent (Uber) to pay Rs. 20,000 for a missed flight owing to delays caused by the driver.

*"Considering the mental agony faced by the complainant for delay to reach at destination due to negligence and careless behaviour of driver of opposite party, the opposite party is liable to pay compensation.....".*

### **Baglekar Akash Kumar vs Paytm and Uni One India Pvt. Ltd**

The complainant had ordered a sewing machine on the Respondent aggregator and when the product was received it was noticed that the country of origin of products was Thailand. As per the new Rules, it is specified that the seller shall provide the information to the E-Commerce entity to be displayed on its platform or website, i.e., all relevant details about the goods and services offered for sale by the seller including the country of origin which is necessary for enabling the consumer to make an informed decision at the pre-purchase stage.

The Respondent (Paytm) contended that it was an intermediary and its role was limited to facilitating transactions between sellers and buyers. It was thus not involved in sale of products. The manufacturer also contended that as all disclosures were made, mere non-display of **country of origin could** not lead to any harm or injury to complaint.

The consumer forum rejected the contentions that held that E-commerce Rules categorically spell out the vicarious liability of the E-commerce entities including online platforms. By presenting themselves as mere intermediaries and claiming liability exemption under Section 79 of the IT Act is not applicable in the instant case as all E-commerce entities will have to mention the country of origin on all products, more so, when imported from other countries that are offered for sale.

## **Shaik Umar Farooq v. Flipkart Internet Pvt Ltd & Anr**

The complainant had purchased two packets of Refined Sunflower Oil pouch on the Respondent (Flipkart) portal. The complainant alleged that the complainant was charged Rs. 70 more than the MRP of each packet and that the original MRP was wiped out by the Opposite parties.

Respondent (Flipkart) contended that as per the Legal Metrology (Packed Commodity) Amended Rules, 2017, an E-Commerce entity is required to ensure that all monetary declaration as specified in the said Rules should be displayed on the digital and electronic network used for e-commerce transactions. However, the responsibility to ensure the correctness of declarations was vested upon the manufacturer, the seller or the importer. This contention did not hold water and the Commission considered Rule 4 (11) (a) that prohibit e-commerce entities from manipulating the price of goods or services on its platform so as to gain unreasonable profits. The Commission held both the e-commerce platform and the seller jointly and severally liable for such "unfair trade practice" and ordered compensation to be paid to the consumer.

*"There is tripartite contract between the seller, service provider, i.e. the Opposite Parties No.1 and 2 and the consumer. As such, the seller and service provider are liable for any defect, deficiency of service and unfair trade practice on the services provided or good/product sold by them."*

## **Flipkart Internet Private Limited vs. State of U.P. And 3 Others**

Complainant alleged that the complainant had purchased a laptop (having a processor of 'intel' brand), from a seller listed on the platform. However, the laptop he got had the processor of the 'A.M.D' brand. The complainant moved the Magistrate court to register an FIR against Respondent (Flipkart) and its officials under various provisions[5] of IPC.

Respondent (Flipkart) contended that it's an e-commerce Marketplace/Platform that provides access to Buyers and Sellers through their website and has a limited role in it, being an 'intermediary' as defined under Section 2(1)(w) of The Information Technology Act, 20004 providing an online platform.

Court granted the relief to Respondent (Flipkart) and set aside the impugned FIR and the consequent police report while noting that *“It cannot be expected that the provider or enabler of the online marketplace is aware of all the products sold on its website/marketplace. It is only required that such provider or enabler put in place a robust system to inform all Sellers on its platform of their responsibilities and obligations under applicable laws in order to discharge its role and obligation as an intermediary. If the same is violated by the Seller of goods or service such Seller can be proceeded against but not the intermediary.”*

### **CONCLUSION:**

Rules impose multiple obligations on the aggregators, and it is important that e-commerce platforms and portals should have clear robust system and practices to make sure that the compliance is made with the Rules. Simple practices as follows:

1. obtaining detailed information as mandated by the Rules from the sellers who desire to list their products / services on the platform;
2. entering into proper detailed agreement with the sellers;
3. appointment of grievance redressal officer;
4. ensuring that no unfair practices are adopted while listing the products or services on the platform;

will go a long way to meet consumer interests. Simply including wide disclaimers or elaborate clauses for shifting liability on the sellers on the platform will not help in case clear violations of the Rules are observed.

For any feedback on the article, the author can be reached on [aarti.banerjee@ynzgroup.co.in](mailto:aarti.banerjee@ynzgroup.co.in)

### **About Aarti -**



Aarti is experienced in corporate legal matters having specialization in drafting, vetting and negotiation of agreements. By qualification she is an advocate and a solicitor.

[1] Thane Additional District Consumer Disputes Redressal Commission: Consumer Complaint 61 of 2021

[2] District Consumer Disputes Redressal Commission of Hyderabad

[3] District Consumer Dispute Redressal Commission at Nalgonda: Consumer Complaint No. 50 of 2021

[4] High Court of Allahabad: Criminal Misc. Writ Petition No. - 3487 Of 2019

[5] Sections- 406, 420, 467, 468, 471, 474, and 474-A of IPC

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