**RIGHTS OF UNPAID SELLER AND RIGHTS OF BUYER**

**Contents:**

**Who is unpaid seller?**

**Rights Unpaid seller**

**Rights and Duties of Buyer**

**Who is unpaid seller?**

Section-45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act (a) when the whole of the price has not been paid or tendered;

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

**Rights Unpaid seller**

# Rights of Unpaid Seller Against Goods

1. **Rights of Unpaid Seller Against Buyer**

# Rights of Unpaid Seller Against Goods

## Rights of Lien

### Seller’s Lien (Section 47)

According to subsection (1) of Section 47 of the [Sale of Goods](https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/definitions-of-important-terms/) Act, 1930, an unpaid seller, who is in possession of the goods can retain their possession until payment. This is possible in the following cases:

1. He sells the goods without any stipulation for credit
2. The goods are sold on credit but the credit term has expired.
3. The buyer becomes insolvent.

Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an [agent](https://www.toppr.com/guides/business-laws-cs/indian-contract-act-1872/classes-of-agents/) or bailee for the buyer.

### Part-delivery (Section 48)

Further, Section 48 states that if an unpaid seller makes part-delivery of the goods, then he may exercise his right of lien on the remainder. This is valid unless there is an agreement between the buyer and the seller for waiving the lien under part-delivery.

### Termination of Lien (Section 49)

According to subsection (1) of Section 49 of the Sale of Goods Act, 1930, an unpaid seller loses his lien:

* If he delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.
* When the buyer or his agent obtain possession of the goods lawfully.
* By waiver.

Further, subsection (2) states that an unpaid seller, who has a lien, does not lose his lien by reason only that he has obtained a decree for the [price](https://www.toppr.com/guides/business-economics/determination-of-prices/intro-to-determination-of-prices/) of the goods.

### Right of Stoppage in Transit

This right is an extension to the right of lien. The right of stoppage in transit means that an unpaid seller has the right to stop the goods while they are in transit, regain possession, and retain them till he receives the full price.

If an unpaid seller has parted with the possession of the goods and the buyer becomes insolvent, then the seller can ask the carrier to return the goods back. This is subject to the [provisions](https://www.toppr.com/guides/accountancy/depreciation-provision-and-reserves/provisions/) of the Act.

#### Duration of Transit (Section 51)

Goods are in the course of transit from the time the seller delivers them to a carrier or a bailee for transmission to the buyer until the buyer or his agent takes delivery of the said goods.

Some scenarios of the transit ending:

* The buyer or his agent obtain delivery before the goods reach the destination. In such cases, the transit ends once the delivery is obtained.
* Once the goods reach the destination and the carrier of bailee informs the buyer or his agent that he holds the goods, then the transit ends.
* If the buyer refuses the goods and even the seller refuses to take them back the transit is not at an end.
* In some cases, goods are delivered to a ship chartered by the buyer. Depending on the case, it is determined that if the master is functioning as an agent or carrier of the goods.
* If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit ends.
* If a part-delivery of the goods has been made and the unpaid seller stops the remaining goods in transit, then the transit ends for those goods. This is provided that there is no agreement to give up the possession of all the goods.

#### How Stoppage is Affected (Section 52)

There are two ways of stopping the transit of goods:

1. The seller takes actual possession of the goods
2. If the goods are in the [possession](https://www.toppr.com/guides/legal-aptitude/jurisprudence/kind-of-possessions/) of a carrier or other bailee, then the seller gives a notice of stoppage to him. On receiving the notice, the carrier or bailee must re-deliver the goods to the seller. The seller bears the expenses of the re-delivery.

#### Effect of Stoppage

Even if the unpaid seller exercises his right of stoppage in transit, the contract stays valid. The buyer can ask for delivery of the goods after making the payment.

1. **Rights of Unpaid Seller Against Buyer**

When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

**1] Suit for Price**

Under the contract of [sale](https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/performance-of-contract-of-sale/) if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due.

But say the sales contract says that the price will be paid at a later date irrespective of the delivery of goods,. And on such a day the if the buyer refuses to pay, the unpaid seller may sue for the [price](https://www.toppr.com/guides/business-studies/marketing/pricing/) of these goods. The actual delivery of the goods is not of importance according to the [law](https://www.toppr.com/guides/business-law-cs/introduction-to-law/various-definitions-of-law/).

**2] Suit for Damages for Non-Acceptance**

If the buyer wrongfully refuses or neglects to accept and pay the unpaid seller, the seller can sue the buyer for [damages](https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-ii/suit-for-damages/) caused due to his non-acceptance of goods. Since the buyer refused to buy the goods without any just cause, the seller may face certain damages.

The [measure](https://www.toppr.com/guides/english/prepositions/preposition-measure-standard-rate-value/) of such damages is decided by the Section 73 of the [Indian Contract Act](https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-i/) 1872, which deals with damages and [penalties](https://www.toppr.com/guides/fundamentals-of-laws-and-ethics/the-factories-act/concept-of-penalties-in-factories-act/). Take for example the case of seller A. He agrees to sell to B 100 liters of milk for a decided price. On the day, B refuses to accept the goods for no justifiable reason. A is not able to find another buyer and the milk goes bad. In such a case, A can sue B for damages.

**3] Repudiation of Contract before Due Date**

If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Indian Contract Act and is known as [Anticipatory Breach of Contract](https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-ii/anticipatory-and-actual-breach-of-contract/).

**4] Suit for Interest**

If there is a specific agreement between the parties the seller can sue for the [interest](https://www.toppr.com/guides/quantitative-aptitude/simple-interest-and-compound-interest/) amount due to him from the buyer. This is when both parties have specifically agreed on the [interest rate](https://www.toppr.com/guides/business-mathematics-and-statistics/time-value-of-money/effective-rate-of-interest/) to be paid to seller from the date on which the payment becomes due.

But if the [parties](https://www.toppr.com/guides/business-laws/the-indian-partnership-act/relation-of-partners-to-third-parties/) do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

**REMEDIES OF THE BUYER/Rights of Buyer**

**Action for damages for non-delivery**

**52 (1)**Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

**(2)**The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the sellers breach of contract.

**(3)**Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

**Specific performance**

**53 (1)**In any action for breach of contract to deliver specific or ascertained goods, the court may, if it think fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

**(2)**The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

**Remedy of buyer for breach of warranty**

**54 (1)**Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but the buyer may

(a) set up against the seller the breach of warranty, in diminution or extinction of the price; or

(b) maintain an action against the seller for damages for the breach of warranty.

**(2)**The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

**(3)**In the case of breach of warranty of quality, such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

**(4)**The fact that the buyer has set up the breach of warranty, in diminution or extinction of the price, does not prevent the buyer from maintaining an action for the same breach of warranty if he has suffered further damage.

**Recovery of interest or special damages or money paid**

**55**Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where, by law, interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

**Rights and duties of buyer in brief:**

**Contract of Sale – Rights of a Buyer**

1. He has the right to have delivery of the goods as per the contract.

2. If the seller does not send, as per the contract, the right quantity of goods to the buyer, the buyer can reject the goods.

3. The buyer has a right not to accept delivery of the goods by installments by the seller.

4. If the goods are sent by sea route by the seller, the buyer has a right to be informed by the seller so that he may get the goods insured.

5. The buyer has a right to examine the goods which he has not seen earlier before giving his acceptance for the same.

6. If the seller wrongfully refuses to deliver the goods to the buyer as per the contract, the buyer may sue the seller for damages for non delivery. The amount of damages will be the difference between the contract price and the market price of the goods.

7. If the buyer has already paid the price and the seller has not delivered the goods as per the contract, the buyer can recover the amount paid.

8. If the contract is for the sale of specific or ascertained goods, the buyer may sue the seller for the specific performance of the contract in case of breach of contract by the latter.

9. The buyer may sue the seller for damages for the breach of any implied warranty as per the provisions of this Act.

10. If the seller rejects the contract before the date of delivery, the buyer may either treat the contract as still existing and wait till the date of delivery or he may treat the contract as cancelled and sue the seller for damages for the breach. The second case is known as the anticipatory breach of contract.

11. If, in view of the breach of contract by the seller, the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount.

**Duties of the Buyer in a Contract of Sale**

The following are the duties of a buyer in a contract of sale.

1. It is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract.

2. It is the duty of the buyer to apply for delivery.

3. It is the duty of the buyer to demand delivery of the goods within a reasonable time.

4. If the contract specifically provides for the delivery of the goods by the seller by installments, the buyer shall accept such a delivery.

5. It is the duty of the buyer to take the risk of deterioration in the goods which is necessarily incident to the course of transit. Example: Rusting of iron.

6. If the buyer refuses to accept the goods, it is his duty to inform the seller about it.

7. If the seller delivers the goods as per the contract, it becomes the duty of the buyer to take delivery of the same within a reasonable time. He remains liable to the seller for any loss arising on account of his refusal to take delivery.

8. If the ownership rights have already been passed on to the buyer by the seller, the former has the duty to pay the price as per the terms of the contract.

9. If the buyer wrongfully refuses to accept and pay for the goods, he will have to compensate the seller for damages for non-acceptance.