

THE SALES OF GOODS ACTS, 1930

contract of sale

The following are some of the essential elements of a valid sale or a contract of sale.

All the requirements of a valid contract such as free consent, consideration, competency of the parties, lawful object and consideration must be fulfilled. If any of the essential elements of a valid contract is absent, then the contract of sale will not be valid.

For e.g., **A** agreed to sell an almirah to **B** without any consideration. Such a contract of sale is not valid because it is made without consideration.

Two Parties

Another essential element of a contract of sale is that there must be two parties to the contract of sale viz., seller and buyer.

In a contract of sale, the ownership of goods has to pass from one person to another. Hence the seller and the buyer must be different persons because one person cannot be both the buyer and the seller.

But there are certain exceptions to this – where a person's goods are sold under an execution of decree he may purchase his own goods.

For e.g., **A** and **B** were partners. After some years, the firm was dissolved. On the dissolution, some goods were divided among all the partners. Such a distribution of goods among the partners was not a sale.

Goods

There must be some goods as a subject-matter. Goods must be one which is defined as goods in Sec. 2(7) of the Sale of Goods Act. As per the definition given in Sec. 2(7) of the Act, goods means every kind of movable property and it includes

1. stock and share,
2. growing crops, grass,
3. the things attached to or forming a part of the land which can be severed from the land.

For e.g., **A** agreed to sell to **B**, wheat crops which is grown in his field. **A** and **B** agreed that **B** may cut the crop and take it away upon the payment of the price. As the growing crop is included in the term "goods", this is a valid contract of sale.

Transfer of Ownership

In a contract of sale, ownership over goods has to be transferred to the buyer by the seller or there should be an agreement to transfer the ownership by the seller to the buyer.

The property in the goods means "all ownership rights" of the goods. In a contract of sale, all the ownership rights of the goods must be transferred by the seller to the buyer. However, the physical delivery of the goods is not required.

For e.g., **A** agreed to buy a new two wheeler from **B** an agent for Rs.25,000. **A** paid the price and got the two wheeler registered in his name and the registration book was

delivered by **B** to **A**. This is a valid contract of sale because the ownership of the two wheeler has been transferred to **A**.

Price

Another essential element of a contract of sale is that there must be some price for the goods. That means, the goods must be sold for some price. According to Sec. 2(10) of the Sale of Goods Act, the term price means "*the money consideration for a sale of goods*".

Thus the price is the consideration for contract of sale which should be in terms of money. If the ownership of the goods is transferred for any consideration other than the money, that will not be a sale but an exchange. However, consideration can be paid partly in money and partly in goods.

For e.g., **A** delivered to **B** 10 cows valued at Rs.2,000 per cow. **B** delivered to **A** 20 bags of rice at Rs.750 per bag and paid the balance of Rs.5,000 in cash in exchange of the cows. This is a valid contract of sale.

Rights of the Buyer:

1. To have delivery of the goods as per contract. (Sec. 31 & 32)
2. To reject the goods when they are not of the description, quality or quantity as specified in the contract (Sec 37).
3. To repudiate the contract when goods are delivered in installments without any agreement to that effects [Sec. 38 (1)]
4. To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance [Sec 39 (30)]
5. To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract. (Sec. 41)
6. To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.
7. To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57)
8. To sue the seller for specific performance
9. To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59)
10. To sue the seller the damages for anticipatory breach of contract (Sec 60)
11. To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buyer (Sec 61)

Duties of the Buyer:

1. To accept the delivery of goods, when the seller is willing to make the delivery as per the contract (Sec. 31)
2. To pay the price in exchange for possession of the goods
3. To apply for delivery of the goods. (Sec. 35)
4. To demand delivery of the goods at a reasonable hour [Sec 36 (4)]
5. To accept delivery of the goods in installments and pay for them, in accordance with the contract. [(Sec. 38 (2)]
6. To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold (Sec 40)
7. To inform the seller in case the buyer refuses to accept or rejects the goods (Sec 43)
8. To take the delivery of the goods within a reasonable time after the seller tenders the delivery (Sec. 44)
9. To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract (Sec 55)
10. To pay damages for non-acceptance of goods (Sec 56)

Rights of the Seller:

1. To reserve the right of disposal of the goods until certain conditions are fulfilled. (Sec 25 (1)]
2. To assume that the buyer has accepted the goods , where the buyer
3. To deliver the goods only when applied for by the buyer (Sec 35)
 - A) Conveys his acceptance;
 - B) Does an act adopting the sale; or
 - C) Retains the goods without giving a notice of rejection, beyond specified date (or reasonable time), in a sale on approval. (Sec 24)
4. To make delivery of the goods in installments, when so agreed (Sec 39 (1)]
5. To exercise lien and retain possession of the goods, until payment of the price (Sec 47 (1)]
6. To stop the goods in transit and resume possession of the goods, until payment of the price (Sec 49 (2) and 50]

7. To resell the goods under certain circumstances (Sec 54)
8. To withhold delivery of the goods when the property in the goods has not passed to the buyer (Sec 46 (2))
9. To sue the buyer for price when the property in the goods has passed to the buyer or when the price is payment on a certain day, in terms of the contract, and the buyer fails to make the payment (Sec 55)

Duties of the Seller:

1. To make the arrangement for transfer of property in the goods to the buyer.
2. To ascertain and appropriate the goods to the contract of sale
3. To pass an absolute and effective title to the goods, to the buyer.
4. To deliver the goods in accordance with the terms of the contract (Sec 31)
5. To ensure that the goods supplied conform to the implied / express conditions and warranties.
6. To put the goods in a deliverable state and to deliver the goods as and when applied for by the buyer (Sec 35)
7. To deliver the goods within the time specified in the contract or within a reasonable time and a reasonable hour. [Sec 36 (2) and (4)]
8. To bear all expenses of and incidental to making a delivery (i.e. up to the stage of putting the goods into a deliverable state [Sec 36 (5)]
9. To deliver the goods in the agreed quantity. (Sec. 37 (1))
10. To deliver the goods in installments only when so desired by the buyer. [Sec 38 (1)]
11. To arrange for insurance of the goods while they are in transmission or custody of the carrier. [Sec. 39 (2)]
12. To arrange for insurance of the goods while they are in transmission or custody of the carrier. [Sec. 39 (2)]

UNPAID SELLER

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 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 of these goods. The actual delivery of the goods is not of importance according to the 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 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 of such damages is decided by the Section 73 of the Indian Contract Act 1872, which deals with damages and penalties. 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.

4] Suit for Interest

If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due.

But if the 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 Buyer Against the Seller

Just as the seller can rescind the contract, then so can the seller. When the seller breaches the contract the buyer also has certain remedies against the seller. Let us take a look at some remedies that the Sales Act prescribes for the buyer.

1] Damages of Non-Delivery

If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

Let's take for example A whose agrees to sell to B 10 pair of shoes for 1000/- each. B was going to sell the same shoes to C for 1100/- a pair. A neglects to deliver the goods to B. Now, B can sue A for non-delivery. He can sue for the amount of 100/- per pair, i.e. 1000/- (the difference between B's cost price and sale price)

2] Suit for Specific Performance

If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

Example: There was a contract between A and B, that A will sell to B a very expensive painting on a specific date. On the said day A refuses to sell. B can approach the court, who orders A to sell the painting to B at the ascertained price.

3] Suit for Breach of Warranty

When the seller breaches the warranty of the goods, the buyer cannot simply reject the goods on such basis. The buyer has two options in such a case,

- set up against the buyer the said breach of warranty in the extinction of the price
- or sue the seller for breach of warranty

4] Repudiation of Contract

If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

5] Sue for Interest

The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recover interest or special damages due to him by the contract. And if there is no specific clause in the contract, the court can come to the rescue of the affected party.

Reference:

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