



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Rights of an Unpaid Seller under the Sale of Goods Act

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Received 04 February 2023; Accepted 25 February 2023; Published 02 March 2023

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*A seller has the right to be paid for the commodity sold by them. Any individual in the position of the seller, such as an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has paid the whole purchase price or is directly liable for it, is considered to be the seller. This article talks about the rights of a seller, who were not paid, what their rights are against the goods and it also explains the rights against the buyers in brief. These rights of a seller have been explained under the sales of goods act, it has been mentioned under chapter 5, which defines unpaid seller as a condition in which an instrument was accepted has not been met when the full cost of the good has not yet been paid to the seller or when a bill of exchange or other negotiable instrument has been accepted as conditional payment but the condition for which it was accepted has not been met, either because the instrument has not been honored or for another reason. A seller becomes an unpaid seller when a buyer fails to settle a debt owed to the seller. The seller is also taking legal action against the purchaser. This is what the seller can do if the buyer breaks the contract. The unpaid seller receives further protections for his rights to the goods.*

**Keywords:** *unpaid seller, buyer, sales of goods act, bill of exchange, cost.*

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### INTRODUCTION

In every contract of sale, there is a reciprocal promise<sup>1</sup> to be performed by the seller and buyer.

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<sup>1</sup> Indian Contract Act 1872, s 2(f)

Any seller becomes an unpaid seller when the whole price of the good has not been paid to them. Further, an unpaid seller is defined under Section 45<sup>2</sup>, in which the term "seller" refers to someone who has the position of a seller, such as a consignor or agent who has paid the price in full or who is personally accountable for it. It would also include a seller's agent to whom the bill of lading has been endorsed, and the term "unpaid seller" is defined as when the whole price of the good has not yet been paid to the seller, or when a bill of exchange or other negotiable instrument has been accepted as conditional payment but the condition for which it was accepted has not been met, either because the instrument has not been honored or because of something else.

There are protections in place for the seller of products both regarding the item itself and the consumer. By accepting delivery of the products, the buyer accepts the seller's lien right under the Sale of Products Act and agrees to pay the agreed-upon purchase price. This pledge to do business with each other is the "consideration" in the contract. Unpaid sellers have rights to the products in question. You have what's called a "lien right" to do this. Let's take a closer look at the lien right and the rights of an unpaid seller against goods.

When a buyer declines to pay the requisite amount to the seller or fails to do so, the seller may in those circumstances become an unpaid seller and have certain rights against the buyer. Considered seller's remedies are these rights. A few features of an Unpaid Seller is that the seller must be unpaid, either wholly or partly, the period that must've been decided had expired and yet the price has not been paid, the seller should not have refused the payment when a price paid via negotiable instrument has been violated. An unpaid seller now has two rights that are:-

### **RIGHTS OF UNPAID SELLER AGAINST THE GOODS**

As per the section, there were three rights available to the unpaid seller against the goods that are:

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<sup>2</sup> Sale of Goods Act 1930, s 45

## RIGHT TO LIEN

An unpaid seller has the right to keep the products in his possession to recover the cost of the given goods. This right that the seller has, which allows him to withhold deliveries of products until his payment is received is known as the right of lien. There could be two types of lien that are:

**General Lien** - A general lien refers to the rights that bankers, factors, wharfinger, attorneys, and policy brokers, who, absent a specific agreement to the contrary, hold as security for the overall balance of the account and any items that are to be bailed to them.

**Particular Lien** - Unless there is a contract to the contrary, a bailee has the right to retain goods until he receives just compensation for services rendered in connection with the goods bailed if the bailee has performed any service requiring activity such as the exercise of labor skill about the goods bailed by the purpose of bailment.

## SELLER'S LIEN

According to subsection (1) of Section 47<sup>3</sup> of the Sale of Goods Act of 1930, an unpaid seller who has the items is allowed to hold the goods until they are paid for. The following possible outcomes allow it to happen:

- When he offers no credit terms while selling the products; or
- When the goods are purchased on credit but the credit term has already passed; or
- When the buyer experiences insolvency.

According to subsection (2) of this provision, the unpaid seller can use their right of lien even if they are in the possession of goods as an agent or bailee for the benefit of the buyer<sup>4</sup>. The exercise of this right is unaffected by the transfer of ownership of the property or the transfer of the documents granting title to the property, so long as the seller continues to have physical

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<sup>3</sup> Sale of Goods Act 1930, s 47

<sup>4</sup> 'Rights of Unpaid Seller Against Goods' (Toppr) <[https://www.toppr.com/guides/business-laws/the-sale-goods-act-1930/rights-of-unpaid-seller-against-goods/#Right\\_of\\_Stoppage\\_in\\_Transit](https://www.toppr.com/guides/business-laws/the-sale-goods-act-1930/rights-of-unpaid-seller-against-goods/#Right_of_Stoppage_in_Transit)> accessed 10 January 2023

possession of the items. In actuality, only holding onto goods is mainly considered a lien until ownership of that property would be passed to the buyer. It is illogical to argue that the seller has a lien against his products when the ownership of the goods has not yet passed to the buyer and the title is still in the seller's possession. According to *Griffith v Parry*, the result of the buyer's insolvency would be the termination of all the credit terms, and the seller is then free to declare, 'I will not deliver the products until I perceive that I shall get my price paid.'

## **PART-DELIVERY**

This is explained in Section 48<sup>5</sup> Sale of Goods Act which specifies that an unpaid seller may use their right to a lien on the remaining goods if he makes a partial delivery. Unless the buyer and seller have a waiver agreement for the lien under partial delivery, this is valid. In the case of *Grice v Richardson*<sup>6</sup>, the sellers had delivered a portion of the three tea shipments that were part of the transaction, but they had not received payment for the portion that was still with them. Until the price was paid, they were permitted to keep it. However, if only a portion of the delivered items exhibits a waiver of lien, now the seller is prohibited from collecting on the balance.

## **TERMINATION OF LIEN**

This could be understood with the help of section 49<sup>7</sup> of the Sale of Goods Act. This section states when an unpaid seller of goods loses his lien. And it can be when a buyer or an agent legally takes possession of goods, even if the price hasn't been paid, the seller loses all rights to those goods. The seller can collect the sales price like any other debt since the buyer has full, unqualified, and irreversible title to the items as soon as they take possession of them. The seller can't use his right of lien when the goods are brought back to him to be fixed, **or** when the law attaches an implied right of lien to every contract of sale; nevertheless, the seller has the option to waive this right, which may be stated expressed, or implied from the seller's actions **or** when the goods are given to a carrier or other bailee to be sent to the buyer, the seller who hasn't been

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<sup>5</sup> Sale of Goods Act 1930, s 48

<sup>6</sup> *State v Grice* (1965) 265 N.C. 587

<sup>7</sup> Sale of Goods Act 1930, s 49

paid doesn't keep the right to get rid of them. The seller's right to a lien is terminated once the items have been given to the carrier for transmission, although he still has the option to halt delivery. If a stoppage results in the seller regaining control of the items in transit, his entitlement to a lien is restored<sup>8</sup>.

The items were delivered to the buyer's shipping agent in the case of *Valpy v Gibson*<sup>9</sup>, who then loaded them onto a ship. However, the buyer fell insolvent while the products were still with the seller for repackaging, and since the seller was still owed money, the seller asserted that they were entitled to keep the goods to execute their lien. According to the ruling, the delivery to the shipping agent resulted in the loss of their lien. In contrast, the seller's lien right lasts until the conclusion of the transit when he has reserved the right of disposal. And just though the seller gets a judgment for the cost of the items that does not mean that he loses his entitlement to a lien.<sup>10</sup>

## **RIGHT TO STOP THE GOODS IN TRANSIT**

When this right is added to the right to a lien, it makes the right to a lien bigger.<sup>11</sup> A seller who hasn't been paid in full is allowed by law to stop his products from being shipped, take them back, and keep them until he is paid in full. This is called the "right to stoppage in transit." If the seller who hasn't been paid has given the buyer ownership of the goods, and then the buyer declares bankruptcy, the seller who hasn't been paid has the right to ask the carrier to give back the goods. A seller can only exercise this right when, The buyer is said to be insolvent if he has stopped paying his debts in the normal course of business or cannot pay them when they are due, regardless of whether or not he has been declared insolvent: or This right is called the right to withhold delivery, and it means that the buyer does not yet own the property.

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<sup>8</sup> 'Rights of an unpaid seller under Sale of Goods Act' (*LawBhoomi*, 01 April 2021)

<<https://lawbhoomi.com/rights-of-an-unpaid-seller-under-sale-of-goods-act/>> accessed 10 January 2023

<sup>9</sup> *Valpy v Gibson* [1847] 4 CB 837

<sup>10</sup> Ashpreet Kaur, 'What are the Rights of an Unpaid Seller?' (*iPleaders*, 16 June 2019)

<<https://blog.ipleaders.in/rights-of-an-unpaid-seller/>> accessed 10 January 2023

<sup>11</sup> Sale of Goods Act 1930, s 50

So, the goods can't be in the hands of either the seller, the buyer, or either of their agents. They must be in the care of a neutral third party, like a railroad or common carrier, whose job it is to move other people's goods. It is against the rules for either the agent of the seller or the agent of the buyer to act as the carrier. Since, if he is the seller's agent, the goods are still legally in the seller's possession and are not in transit, and since, if he is the buyer's agent, the goods are legally delivered to the buyer and the stoppage problem is solved, neither party has a reason to complain.

Duration of transit<sup>12</sup>: Delivery can only be stopped while it's in transit, so it's important to know when that is. Once transport is over, you no longer have the right to stop. Items that have been given to a carrier or other bailee so that they can be sent to the buyer are said to be "in transit" until the buyer or his agent takes delivery.

## **RIGHT OF RESALE**

Without this right, the other two rights of lien and stoppage would be of little use since he can only keep the goods under these rights until the buyer pays the money. Exercising the right of lien or stoppage does not rescind the agreement, but selling the goods does, and this right is what allows him to sell the goods again. A few conditions for the right of reselling the goods are:-

- Perishable products can be sold off right away by an unpaid seller without giving the buyer prior notice. However, in the case of non-perishable commodities, the seller must notify the customer before reselling them.
- When the unpaid seller gives the notice to the buyer for the same but the buyer still doesn't pay for it.
- When the right of resale is beforehand mentioned in the contract.

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<sup>12</sup> Sale of Goods Act 1930, s 51

## RIGHTS OF SUIT FOR UNPAID SELLER AGAINST THE BUYER

Under this, the buyer could be sued for the price<sup>13</sup> that is, if the buyer has received the products but has wrongfully failed to pay or refused to comply with the terms of the contract, the seller has the right to file a lawsuit against the buyer for the price of the products to recover their total price. The seller can also sue the buyer for damages<sup>14</sup> under this, according to the sales of goods act, if the buyer knowingly fails to accept the products or refuses to pay for them, the seller may submit a claim for damages for non-acceptance and claim damages for such losses.

Another right of an unpaid seller is suited for interest<sup>15</sup> that is, when there is a predetermined agreement between the buyer and the seller concerning the amount of interest that will be added to the price of the goods beginning on the day when payment is due, the seller has the right to collect interest from the customer. If there was no such agreement, however, the seller has the right to begin charging interest on the purchase from the day that he notifies the buyer.

Also, if one party backs out of the contract before the deadline, the other party has two options. He can also accept the breach right away, files a claim for damages, and the contract will be void without having to wait until the day of delivery. The number of damages will be based on the rates that are in place right now. In the second, an open-risk contract, both parties get something out of it. If the party who didn't want to follow through finally did, any compensation would be based on how the market was doing on the day of delivery.

## JUDICIAL FRAMEWORK

In the case of *Contship Container Lines Ltd. v D.K. Lall & Others*<sup>16</sup> It has been decided that if the seller has given up ownership of the items but has not been paid, he has no insurance coverage on them unless he still has them or has a lien, charge, or other security interest on them for the purchase price. As long as the risk stays with him, he still has a stake in the items, even if the

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<sup>13</sup> Sale of Goods Act 1930, s 55

<sup>14</sup> Sale of Goods Act 1930, s 56

<sup>15</sup> Sale of Goods Act 1930, s 61

<sup>16</sup> *Contship Container Lines Ltd v D.K. Lall & Ors* AIR (2010) SC 1704

property has changed hands. His stake is equal to the greater of the purchase price and the real value of the items. After risk and ownership have been transferred, the seller still has an insurable interest in the goods until he is paid in full, even if the buyer goes bankrupt or for some other reason doesn't pay. Since he already owns the goods, he can also get insurance for the buyer, as long as the buyer knows what he is doing and the policy doesn't say otherwise. But Section 49<sup>17</sup> of The Sale of Goods Act says that the lien is released when the goods are given to a carrier to be sent to the buyer. This is because the seller had no rights or liens over the goods at the time. If the contract didn't say otherwise, the seller's lien on the goods was released when they were given to the carrier.

**M/S.Pacificorp (Hk) Limited v The Commissioner of Customs**, Section 45 of the Sale of Goods Act of 1930 says that the seller, in this case, is an "unpaid seller" because the full sales price was not paid or offered. This happens when an offer is made that is less than the full asking or purchase price. Section 46 of the Act gives unpaid sellers a legal right to keep the goods they sold until they get paid. Even if the buyer has already taken legal ownership of the goods, this is still the case. So, the petitioner, who is a seller who isn't getting paid, is right about the goods in question. Since then, the respondents have permitted him to ask for the disputed goods to be re-delivered or sent back to where they came from.

A seller who has not been paid for the products that he has sold has a lien on those commodities for the price of such goods "while he has them," as the phrase in the preceding sentence states. As a consequence of this, the underpaid seller is unable to place a lien on the products he does not own because he does not own them. In its decision regarding the case of *Pawan Hans Helicopters Ltd. v Aes Aerospace Ltd.*<sup>18</sup>, the Honorable High Court of Delhi expressed its agreement with this point of view<sup>19</sup>.

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<sup>17</sup> Sale of Goods Act 1930, s 49

<sup>18</sup> *Pawan Hans Helicopters Ltd. v Aes Aerospace Ltd.* (2008) (2) ARBLR 63

<sup>19</sup> Gunita Pahwa & Priya Dhankhar, 'Unpaid Seller's Lien - Contracts and Commercial Law - India' (*Mondaq*, 16 August 2016) <<https://www.mondaq.com/india/contracts-and-commercial-%20law/519392/unpaid-seller39s-lien>> accessed 01 February 2023



## CONCLUSION

If the buyer doesn't pay on time for any bills of exchange or other negotiable instruments that the seller accepted as a condition precedent, it means that the seller hasn't been paid in full or hasn't received full payment. After letting the buyer know he plans to resell, the seller can use his lien or stoppage in transit rights to sell the items to a new buyer, who will then be the legal owner of the goods. But this is only true if the seller did this before selling the items again. If the buyer doesn't make the payment, the seller can put a lien on the property and go to court against the buyer.