

## **Rights of Unpaid Seller against goods and buyer**

### **Unpaid Seller: Definition**

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.

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.<sup>2</sup>

### **Rights of an Unpaid Seller**

An Unpaid seller has two-fold rights, viz:

- a) Rights of unpaid seller against the goods; and
- b) Rights of unpaid seller against the buyer personally.

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### **Rights of Unpaid Seller Against Goods**

An unpaid seller has certain rights against the goods and the buyer. In this [article](#), we will refer to the sections of the Sale of Goods Act, 1930 and look at the rights of an unpaid seller against goods namely rights of lien, rights of stoppage in transit etc.

### **Rights of Lien**

Seller's Lien (Section 47)

According to subsection (1) of Section 47 of the [Sale of Goods](#) 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](#) 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](#) 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](#) 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 or 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](#) 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.

### **Pledge by the Buyer (Section 53)**

Unless the seller agrees, the right of lien or stoppage is unaffected by the buyer selling or pledging the goods. The principle is simple: the second buyer cannot be in a better position than the seller (first buyer). However, if the buyer transfers the document of title or pledges the goods to a sub-buyer in good faith and for [consideration](#), then the right of stoppage is defeated.

There are two exceptions to make note of:

### **a. The seller agrees to resale, mortgage or other disposition of the goods**

If the seller agrees to the buyer selling, pledging or disposing of the goods in any other way, then he loses his right to lien.

### **b. Transfer of the document of title of goods by the buyer**

When the seller transfers the document of title of goods to the buyer and the buyer further transfers it to another buyer who [purchases](#) the goods in good faith and for a price, then:

- If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.
- If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of the pledgee.

#### **Right of Resale (Section 54)**

The right of resale is an important right for an unpaid seller. If he does not have this right, then the right of lien and stoppage won't make sense. An unpaid seller can exercise his right of resale under the following conditions:

- ***Goods are perishable in nature:*** In such cases, the seller does not have to inform the buyer of his intention of resale.
- ***Seller gives a notice to the buyer of his intention of resale:*** The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.
- ***Unpaid seller resells the goods post exercising his right of lien or stoppage:*** The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.
- ***Resale where the right of resale is reserved in the contract of sale:*** If the [contract](#) of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.
- ***Property in the goods has not passed to the buyer:*** The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.

### **Rights of an unpaid seller against the buyer personally**

- These rights of the unpaid seller against the buyer are called 'rights in personam'. These are as follows:
- If the property in the goods has passed to the buyer and the buyer wrongfully refuses to pay for the goods, the seller may sue him for the price.
- Even if the property in the goods has not passed to the buyer, the unpaid seller may sue the buyer for the price if he wrongfully refuses to pay.
- If the buyer wrongfully refuses to accept and pay for the goods, the seller may sue him for non-acceptance.
- If the buyer abandons the contract before the date of delivery, the seller may treat the contract as existing and wait till the date of delivery or he may treat the contract as cancelled and sue the buyer for damages for the breach.
- If there is a specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If there is no such agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer