

All about Damages to Seller on Breach of Contract by Buyer

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Introduction

A relationship that develops between two parties on entering into an agreement, where one party sells an article (or, good(s)) and the other buys it in exchange of a consideration. This consideration is in form of money and has to be agreed upon by the parties. When these essentials are fulfilled, the parties are said to be entered into a contract of sale.

The parties in these transactions are Seller and Buyer. The former is one who is selling the product and the latter is the one who is buying the same in exchange of a consideration. If in any case any of parties do not perform their part of contract, they are said to breach the contract thereby causing loss to the other party.

Law in India

In case of breach of contract, damages are to be paid by the defaulting party to its counterpart. Herein are discussed the damages that a buyer has to give to the seller in case he breaches the contract of sale under the provisions of Sections 55 and Section 56 of Sales of Goods Act, 1930.

Section 55(1) is about the right to seller to sue the buyer if he wrongfully refuses to pay for the goods that are delivered to him and Section 55 (2) is about the right of seller to sue the buyer for the price if it is not paid as per the conditions laid down in a contract. In other words, if there is a condition in the contract of sale specifying the date of payment then the buyer is obliged to pay the same within the time specified in the contract. If he fails to do so, it would amount to breach of the contract.

Further, Section 56 mentions about the right of seller to receive damages for non acceptance of the goods by the buyer. If the buyer wrongfully neglects or refuses to accept or pay for goods, the seller may sue him.

The above mentioned rights are based upon the principle under Section 73 of The Indian Contract Act, 1872 that talks about the obligation of defaulting party to pay for the damages

incurred by the other party in terms proportional to his benefit that he would have incurred when the contract would have been executed.

Section 73 of the contract act is based on the rule laid down in *Hadley v. Baxendale (1854 (9) Exch 341)* wherein it was said:

“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e., according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in contemplation of both parties at the time they made contract, as the probable result of it.”

This principle has played equally important role in Indian Contract law as well which is evident from the following case laws as decided by the honorable Apex court of the country.

In the case of **Bungo Steel Furniture v. Union of India (AIR 1967 SC 378)**, Supreme Court held that Petitioner was entitled to damages by the government because of the fact that the respondent wrongfully neglected to receive the goods. The facts of the case were such that there was a contract for the supply of steel bins to the Government of India and before the bins had been actually manufactured the government terminated in contract. The court relied on the principle laid down in the Contract Act.

In **Suresh Kumar v. M. Assan Koya & Sons (AIR 1990 Ker 220)** Kerala High Court allowed the seller to claim the difference in the contract price and the price fetched on the sale of goods as damages when on buyer's wrongful refusal to take delivery the seller sold the goods and there was nothing to show either that the sale was not for market price or it was conducted in an improper manner.

Hence, it can be said that in this era of societal marketing in India wherein customer and his choices are kept at peak and their rights are the most respected one, seller has none less. If it is seen that a customer tends to over-use his rights, seller is entitled to few rights too. These rights thus, should be exercised by the seller.

International Law

Under this branch of law, The United Nations Convention on Contracts for the International Sale of Goods (in short, CISG) governs the sale of goods within the countries. The convention governs contracts for the international sales of goods between private businesses, excluding sales to consumers and sales of services, as well as sales of certain specified types of goods. This convention was adopted on April 11, 1980 and has been playing imperative role in regulating sale of goods between different countries. Not only this, the law is also said to inspire changes in national contract law(s) as well.

This convention on contracts provides with provision for damages to the party even in case of minor breach of duty by any of the parties. If seller commits breach, buyer is entitled to damages under Article 45 and if buyer commits breach, seller is entitled to damages under Article 61(1) (b). However, the mechanism as to how these damages would be ascertained is provided under Article 74 to Article 77 of the convention.

Article 74 provides with the extent of damages that a party can ask for to the defaulting party. It sets out that the damages are equal to the amount of loss, including loss of profit, suffered by the other party as a consequence of breach. Such damages may not exceed the loss that was foreseeable or ought to have foreseen at the time of conclusion of contract in light of facts and circumstances which he could have foreseen as a consequence of breach of contract.

This article was taken into consideration by various courts all around the world. In a case in Austria, it was held that a breaching buyer, who failed to pay the price in advance, as required by the contract, could foresee that an aggrieved seller of fungible goods would lose its typical profit margin. Hence, damages to seller were awarded. [CLOUT case No. 427 [AUSTRIA Oberster Gerichtshof 28 April 2000]]

Emphasizing on the fact of foresee ability, the court in Switzerland with majority of another court awarded 10 percent of the price as damages to a seller who had manufactured the goods to the special order of the buyer; the majority noted that a breaching buyer could expect such a seller's profit margin. [CLOUT case No. 217 [SWITZERLAND Handelsgericht des Kantons Aargau 26 September 1997]]

Article 75 regulates the operation of a substitute transaction, which is adopted in most legal systems. The aggrieved party may carry out a substitute transaction in a reasonable manner and within a reasonable time after avoidance and may recover the difference between the contract price and the price of the substitute transaction as per this article.

Article 76 provides that an aggrieved party may claim recovery of the difference between the contract price and the current price for the goods if the contract has been avoided, if there is a current price for the goods and if the aggrieved party has not entered into a substitute transaction. The article designates when and where the current price is to be determined. The last clause of the first sentence of paragraph (1) also provides that an aggrieved party may recover further damages under the general damage formula set out in article 74. The article 76 formula is a familiar one.

Stating that the seller's lost profit was to be established under article 76, a court in Germany affirmed an award of damages to an aggrieved seller in the amount of ten per cent of the contract price because the market for the goods (frozen venison) was declining and the seller set its profit margin at ten per cent, which was the lowest possible rate. This was done by way of provision provided in Article 76 of the convention on Sale of Goods, as adopted by UNCITRAL. [GERMANY Oberlandesgericht [Appellate Court] Braunschweig 28 October 1999]

Article 77, further incorporates the principle of Mitigation according to which a non performing party is not liable for loss of other party to the extent that the aggrieved party could have taken by taking reasonable steps forward. However, the aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the loss.

Therefore, it can be concluded that the convention has governed various contract and dispute settlements all around the world. Moreover, it does not provide with specific damages that may be available to the seller and to the buyer in case of breach by other party but it provides with universal provisions that are free to be interpreted as per the facts of the case. The wide terms and words in the provisions of the article thus give a huge gamut of interpretation in consonance with the contract and the convention.