

Damages to Buyer in Case of Breach of Contract By Seller

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A contract is seen as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The contract laws of various countries govern their respective contracts. In the chance of the breach of said contracts, there are damages liquidated and unliquidated available to the parties to the contracts. The current analysis is regarding the damages available to buyers in Indian law.

Buyer's Remedies against the Seller

As Under Indian Law (Sale of Goods act, 1930):

The buyer has three remedies against the seller for breach of contract under the Sale of Goods Act. These are:

1. Damages for Non-Delivery:

Section 56 and Section 57 of the Sales of Goods Act, 1930 deal with the rights of the seller of goods by way of suits against buyer either for recovery of the price or for the non-acceptance of goods. **Section 57** states that if the seller is intentionally or wrongfully neglecting the delivery of the goods to the customer, the customer can sue the seller for damages for non-delivery. In the case where the property in the goods has been passed to the buyer, and the buyers have the right to immediate possession, he gets all the remedies an owner of the goods will get against anyone whose activities are inconsistent with his rights. When the amount of damage is to be calculated, it'll be done on the basis of the difference between the contract price and the market price on which the damage occurred. In the case where the buyer had paid the money in advance, the date which is to be considered for measuring the damages will be the day on which the payment was made. The buyer can also claim the amount which was used to find an alternate remedy for the breach.

2. Suit for Specific Performance:

Section 57 of the Act states that subject to provisions mentioned under **Specific Relief Act, 1877**, in a case of breach of contract, the Court may, on an application by the plaintiff direct the defendant that the contract should be performed specifically. The decree passed by the court may be unconditional as to terms and conditions as to price, amount of damages, etc. This happens in situations where damages might not be adequate as a remedy, like when the good in question is a famous painting by a dead painter. As stated above, previously the provision which related to the sale of goods was governed by the **Contracts Act**. The **Contracts Act** did not provide for this kind of remedy. The **Specific Relief Act was introduced in 1877** so that equitable remedy could be made available to the aggrieved party. This section provides a solution only to the buyer. The seller cannot file an application under **Section 58** to enforce a specific performance, because this section provides no rights to the seller, and only on request of the buyer can specific relief be provided.

3. Remedy for Breach of Warranty:

Section 59 of the Act states that when there is a breach of warranty on the part of the seller, the buyer is not entitled to reject the goods on that basis, but he may sue the seller breach of warranty in diminution or extinction of the price. The seller may also sue the buyer for breach of warranty in the diminution or extinction of the price. Definition of warranty is given under **Section 12 (3) of the Act**. **Section 13** states that if any condition is to be fulfilled by the seller, the buyer may consider the breach of condition as a breach of warranty. In this case also, the buyer does not have the right to reject the goods. This section does not deal with the cases of fraudulent misrepresentation on the part of the seller, which will give the buyer to set aside the contract. This sections also do not deal with cases where the buyer can set aside a contract under the terms expressly provided by the contract on breach of warranty. The buyer cannot invoke this section in cases where the buyer has lawfully rejected the goods. The buyer can proceed under **Section 57 or Section 61** of the Act to recover the purchase price along with the interest. In a

case where the warranty is given by the seller with regards to the quality of the product, and the warranty has been breached, the amount of the damages will be determined on the basis of worth of goods at the time of delivery, and what should have been its actual worth according to the contract. For a breach of warranty, it is required that the buyer relied upon the warranty given by the seller, and had acted reasonably to minimize the damage caused.

MASON V. BURNINGHAM (1949)¹

In 1945 The plaintiff, a lady, purchased a second-hand typewriter from the defendant. She thereafter spent some money on its repair and used it for some months. Unknown to the parties the typewriter was a stolen one and the plaintiff was compelled to return the same to its true owner. She was held entitled to recover from the seller for the breach of this warranty damages reflecting not merely the price paid but also the cost of repair (Mason vs. Burningham). [Notice that the decision in the instant case would not change if we treat it as a case of breach of condition as to title under Sec. 14(a)] the breach of this warranty gives the buyer a right to claim damages from the seller. In every contract of sale, the first implied warranty on the part of the seller is that “the buyer shall have and enjoy quiet possession of the goods.” If the quiet possession of the buyer is in any way disturbed by a person having a superior right than that of the seller, the buyer can claim damages from the seller. Since disturbance of quiet possession is likely to arise only where the seller’s title to goods is defective, this warranty may be regarded as an extension of the implied condition of title provided for by Section 14(a). In fact, the two clauses of Section 14 [i.e., (a) and (b)] are overlapping and it is not easy to see what additional rights this warranty confers on the buyer over and above those conferred by the implied condition as to title contained in Section 14(a).

¹ Mason v Burningham [1949] 2 KB 545

DINGLE V. HARE (1859)²

The defendant agreed to sell and sold the plaintiff a certain quantity of goods with a pre-decided constitution of potency. While the final delivered good was lesser in value to the plaintiff as the potency was lesser than the agreed amount. Thus the suit was for breach of warranty on a sale of goods.

The proper measure of damages was the difference between the real market value at the time of the sale and the contract price. Quaere, whether the buyer might not have been entitled to recover a sum fairly and reasonably paid by him as compensation to a third person to whom he had upon the faith of the defendant's warranty sold a portion of the goods.

Additional remedies available to both buyer and seller:

1. Interest by way of Damages and Special Damages:

Section 62 of the Act states that the buyer or seller can recover special damages where by law special damages or interest may be recoverable. There is a limitation to this remedy. The parties should have contemplated that a particular loss may occur if the contract is breached in any manner. And also, the particular loss must have taken place after the violation of the contract. **The Interest Act**, which was introduced in 1839, states that interest also shall be paid by way of damages in certain cases. *The point which is to be noted here that the seller can only claim interest when he is entitled to recover the price. When the seller is suing only for damages for breach of contract, he cannot claim any interest. The same principle applies in the case of the buyer also. He cannot claim an interest if he is suing the buyer for breach of warranty.*

STATE TRADING CORPORATION V. TARA JEWELLERS³

Due to government's ban on export in the 1980s, a contract for the purchase of silver for export was frustrated. In a claim for the refund of the price as well as interest

² Dingle v Hare (1859) 7 CBNS 145

³ State Trading Corporation v. Tara Jewellers

thereon, the Calcutta high court allowed the refund as well as interest @6% p.a. from the date of suit till refund date.

2. Suit for Repudiation of Contract before the Date or Anticipatory Breach:

Section 60 of the Act states that if any party renounces the contract before the delivery of the goods, the other party may wait till the date of delivery of the goods or may treat the contract as annulled and claim for damages. This provision is not a part of the English Law on which the Indian Law is based. The party not in default can choose to keep the contract alive by not accepting the repudiation of the defaulting party. In such a scenario, if at the time of performance of the contract, he refuses to perform his part or is unable to perform his part, the defaulter party would be discharged, and the position will be as it would have been as if there was no repudiation of the contract before the date of the contract.

FROST V. KNIGHT (1872)⁴

K promised to marry F upon K's father's death. While K's father was still alive, K told F that he was not going to marry her after his father's death. F brought an action for breach of promise. It was held that F was entitled to accept K's repudiation of the contract to marry her and to sue K.

It was held that one contracting party may simply refuse to continue to perform his contractual obligations. In such a case, the other contracting party can bring an action in court for breach of contract once he can show that he was always willing to fulfil his duties under the same contract.

For example, P is a seller and Q is a buyer. Q repudiates the contract before date, but P does not accept the repudiation and keeps the contract alive. On the date of performance, P delivers the products. But these are not according to the specification of Q. in this case Q may reject the goods. P will not be able to avail any remedy. Or Q may accept the goods and treat the breach of condition as a breach of warranty and recover damages from P.

⁴Frost v. Knight (1872) L. R. 7 Ex. 111

