

Chapter- 17

Sale of goods act, 1930 Performance of Contract of Sale

Performance of Contract of Sale

Performance of contract of sale means delivery of goods by seller and acceptance of delivery of goods and payment for the same by buyer.

- **Seller's main duty:-**

→ Is to deliver the goods to the buyer

- **Buyer's main duty:-**

→ To accept the goods and pay the price to the seller as per the terms of the contract

The parties are free to provide any terms in their contract regarding time, place, delivery, payment of goods and so on. But if the parties are silent and no terms are mentioned in the contract then rules contained in the sale of goods act will be applicable.

Meaning of Delivery

Voluntary transfer of possession from one person to another

Types of Delivery:-

1. Actual Delivery

It means actual physical delivery of the goods to the buyer or his authorized agent by the seller or his authorized agent.

2. Symbolic Delivery

When goods are not physically delivered but the means of obtaining possession of goods is delivered to buyer. Symbol is used for delivery.

Example: Handing over of keys of godown where goods are safely kept etc.

3. Constructive Delivery

Third party is involved in delivery. Seller don't deliver the goods directly.

Example: Seller → Warehouseman/ warehouse keeper → Buyer

Rules relating to delivery of Goods:

1. Payment and delivery are concurrent (performed at the same time)

Payment and delivery are concurrent, which means both should be performed at the same time unless otherwise agreed.

Example: Cash sale (this is not applicable for credit sale)

2. Delivery may be actual, symbolic or constructive

3. Effect of part delivery

If the order placed is so big and delivery of goods takes place in parts so when buyer accepts the part delivery then that means, buyer is giving the acceptance to the whole delivery.

4. Buyer to apply for delivery

Buyer should ask the seller to deliver the goods.

5. Place of delivery

Place of delivery should be specified by the parties, in case when no agreement is there/ parties are silent about it then place of contract will be considered as place of delivery.

Example: If place of contract is factory then place of delivery will also be considered as factory.

6. Time for delivery of goods

Delivery should be done within specified time. If no time is specified then delivery should be completed within a reasonable time.

7. Goods in possession of third party

If goods are in possession of third party like warehouseman/ warehouse keeper then seller needs to acknowledge the sale to third person like warehouseman who will then deliver the goods to buyer.

8. Expenses of delivery

Seller will borne all the expenses to bring the product to deliverable state and for obtaining the delivery, buyer will borne all the expenses.

9. Delivery of wrong quantity- either short/ excess/ mixed delivery

a) Short Delivery

Received amount is less than the ordered quantity.

Example: Ordered 100 quantity from seller → Received 90 quantity

In this case, buyer has below mentioned options:

- i) Reject the goods
- ii) Accept the goods- But if he accepts the goods so delivered then he is bound to pay for them at the contract price.

b) Excess Delivery

Received amount is more than the ordered quantity.

Example: Ordered 100 quantity from seller → Received 110 quantity

In this case, buyer has below mentioned options:

- i) Reject the whole goods
- ii) Accept the whole goods
- iii) Accept the contracted quantity of goods i.e 100 and reject the rest i.e 10

c) Mixed Delivery

It means goods delivered have the goods of different description as well then contracted for.

Example: Ordered 100 quantity from seller → Received 50 quantity matches to the specified description during the contract and 50 quantity does not match with the description

In this case, buyer has below mentioned options:

- i) Reject the whole goods
- ii) Accept the contracted goods and reject the rest- If the buyer accepts the whole goods then he can't sue the seller for delivering the mixed goods

10. Instalment Deliveries

If parties agree to get the goods in instalments then buyer is bound to accept the delivery thereof by instalments.

Parties are not bound to deliver the goods in instalments unless agreed.

11. Delivery to the carrier/ courier company

If seller gives the goods to carrier/ courier company to deliver the same to the buyer then that does not mean that goods are delivered to buyer, it will be considered in transit unless delivered to the buyer actually.

12. Buyer has the right to examine the goods

After examining, if buyer is satisfied then buyer can keep the goods.

After examining, if buyer is not satisfied then buyer can reject the goods.