



# LEGAL CONSEQUENCE OF NON-PAYMENT OF SALE CONSIDERATION

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**Abstract--** Understanding the complexities of contract law depends on knowing the legal repercussions of not paying the selling consideration. This article examines the tenet of contract law that states “No Consideration, No Contract”. It examines the subtleties of sale consideration, its different manifestations, and the crucial function it serves in the creation of a legally binding contract. This article explores the causes of non-payment and divides them into partial and total non-payment by examining legal precedents. The legal repercussions that accompany non-payment, such as contract breach, particular performance, damages, rescission, and deposit forfeiture, are at the centre of the topic. The article also discusses justifications for not paying as well as legal deadlines as defences against non-payment. This thorough examination highlights the significance of upholding contractual responsibilities and offers legal professionals, academics, and everyone interested in contractual agreements an invaluable resource.

**Keywords:** *Consideration, Sale, Indian Contract Act, Contractual Responsibilities*

## INTRODUCTION

Any contractual agreement is the foundation of sale consideration. A consideration in the context of contracts is anything of value that is transferred between the parties, generally in the form of commodities, services, money, property, or obligations to do or not do anything. Specifically, section 2(d) <sup>1</sup> of the Indian Contract Act, 1872 defines consideration as such, the Consideration means: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise". Consideration means 'something in return'. Sale consideration guarantees that all parties have a stake in the outcome of the transaction. The supplier commits to provide a good or service, and the customer agrees to pay. This shared responsibility results in a contract that is legally enforceable and establishes the parties' respective rights and obligations. A contract without consideration is often regarded as invalid in legal terms. This component converts a simple promise into a contract that is enforceable in court. In order for a sale transaction to be lawful and enforceable in court, the parties involved require consideration. The price at which goods or services are being exchanged is determined by the sale consideration. It guarantees precision and avoids misunderstandings between the parties. A key element of the contract that shapes its terms and conditions is the amount of consideration. The sale price is a reflection of the parties' negotiating position. It represents the value that one party sets on the good or service and the other party's readiness to pay for that value. Commercial transactions require this negotiating process since it enables parties to agree on the terms of the transaction.

A buyer faces serious legal repercussions when they don't pay the agreed-upon payment, which is their obligation. These consequences, are many and have broad repercussions for both parties to the contract. Contract violations include non-payment. When one side fails to comply with an agreement without a good/ reasonable reason, there has been a breach. For infringing the terms of the contract, the non-defaulting party may file a lawsuit against the defaulting party. The non-defaulting party (the party that did not receive payment) is entitled to a number of legal remedies. To make up for the monetary loss brought on by the breach, they may seek compensatory damages. Specific performance may be sought

<sup>1</sup> From Bare Act of Indian Contract Act, 1872, § 2(d), No. 09, 1872.



in some circumstances, requiring the party in default to pay the agreed-upon amount. Business connections can be strained by late payments. The parties' mutual trust is damaged, which decreases the likelihood of future transactions. Businesses frequently depend on trust and dependability; a breach may harm a seller's reputation and hinder its ability to win new clientele. In the event of non-payment, legal action may be taken. Legal actions can be expensive and time-consuming for both sides. The contract's provisions, the circumstances of the breach, and any potential defences put out by the defaulting party will all be taken into consideration by the courts. Parties to business transactions are protected by laws and regulations in various jurisdictions. It is crucial to comprehend these legal frameworks since, depending on the type of violation and the applicable laws, they may offer extra remedies or restrictions.

### THE FUNDAMENTAL PRINCIPLE: NO CONSIDERATION, NO CONTRACT

A key idea in contract law is the adage “**No Consideration, No Contract**” which states that a contract lacks legal legitimacy unless one party provides the other with something worthwhile, known as consideration. Consideration can come in many different forms, including cash, commodities, services, or commitments to carry out particular tasks or refrain from engaging in certain behaviours. It acts as a bribe or fee to make the promises of the parties enforceable. In essence, consideration is what makes a contract reciprocal; because both parties have received something in exchange, they are obliged to uphold their end of the bargain.

A consensus between the parties is necessary for a contract to be deemed legitimate. Sale consideration guarantees that all parties stand to gain, resulting in consensus and sincere agreement. “**Consensus Ad Idem**” is the term used under the Indian Contract Act, 1872 which denotes **same thing in the same sense**. The sale consideration is evidence of the parties' desire to establish a legal relationship. When both parties contribute, it suggests that they are serious about the agreement and are ready to be bound by its provisions in law. Free pledges or commitments made without any genuine commitment are prevented by requiring payment in exchange. It makes ensuring that agreements are founded on legitimate business dealings rather than haphazard or unofficial agreements. The basis for the legal enforcement of commitments is the sale consideration. The opposite party may file a lawsuit if the other party does not carry out their duties. This encourages fairness and responsibility in business dealings. The case of *Currie v. Misa*<sup>2</sup> established the modern definition of consideration. The court upheld in this case that consideration in a contract might be either a gain or a loss for the party making the commitment. It emphasized the necessity of this consideration and how important it is for a contract to be legally enforceable. A contract lacks legitimacy and cannot be enforced by the courts if there is no consideration.

In *Chappell & Co. Ltd. & Anr. v. Nestle Co. Ltd. & Anr.*,<sup>3</sup> the court held that the inclusion of a music record inside chocolate bars constituted a valid consideration, even though the cost of production was minimal. The court held that the act of purchase was consideration, reinforcing the principle that consideration could be in various forms as long as it had value.

In *Kewal Krishan v. Rajesh Kumar*,<sup>4</sup> it was decided that in order for a sale to be valid, the amount agreed upon must be paid. Otherwise, the sale deed would be void. The Hon'ble Supreme Court of India reflected its views regarding Section 54 which is reproduced as under.

<sup>2</sup> (1875) LR 10 Ex 153

<sup>3</sup> 1959] AC 87.

<sup>4</sup> Civil Appeal Nos. 6989-6992 Of 2021(Arising out of SLP (C) Nos. 2033-2036 of 2016)].



*“A sale of an immovable property must thus be for a certain amount. The cost might not be due right away. It could be partially paid with the possibility of future payment for the balance. An essential component of a transaction covered by section 54 of the TP Act is the payment of the purchase price. A sale is not considered to have occurred in the eyes of the law if a sale deed for an immovable property is signed without the payment of the purchase price and if it does not call for the payment of the purchase price at a later time. It has no legal consequences. This makes the sale null and invalid. The transfer of the real estate will not be impacted.”*

Nevertheless, it is correct to say that a sale deed cannot be voided just because the whole purchase price was not paid. In *Dahiben v. Arvinbhai Kalyanji Bhanusali*<sup>5</sup> the Hon'ble Supreme Court underlined that the sale deed cannot be void only because the whole purchase price has not been paid, The Court gave its decision in *Vidyadhar v. Manikrao*,<sup>6</sup> in which it was decided that failure to pay a portion of the purchase price would not invalidate the transaction. Even if the remaining sell price is not paid, the transaction cannot be revoked, once the title of the property has been transferred. But it is essential that both the parties must agreed to transfer the property's ownership rights and also agreed upon the terms and conditions of the payment, whether the payment is made at once or later. For any transaction of 'sale'.the conduct of the individuals involved, and the available evidence are essential to determined the intention of the parties involved in the sale.

#### LEGAL CONSEQUENCES OF NON-PAYMENT

When one party does not carry out its commitment, such as failing to pay the agreed-upon selling price, this is a non-payment breach of the contract. This is a breach of the conditions stated in the contract. The Indian Contract Act, 1872 has mentioned under section 73, that the party who is not at fault may seek damages for this violation of the transaction from the other party.<sup>7</sup> The damages are intended to make up for the loss incurred as a result of the non-payment.

A legal remedy known as “**specific performance**” requires the court to direct the parties in case of breach of contract of sale transaction to carry out the agreement's terms and conditions as laid down in the Act. It indicates that in the case of non-payment, the court may order the defaulting party to pay the sale consideration in accordance with the contract. In situations involving special attributes or when monetary remuneration is insufficient, then the parties must be governed by the terms and conditions regarding specific performance as per section 10 of the Specific Relief Act, 1963.<sup>8</sup>

The objective of compensatory damages is to make up for the actual losses incurred by the non-defaulting party as a result of the breach of transaction. Sections 73 and 74 of The Indian Contract Act, 1872, clearly mentioned about the amount of damages to be paid in case of breach of transactions by the defaulting party. As long as the damages are not penalties under , A party is required to pay liquidated damages in the event of a breach of the contract. Such damages must represent a true pre-estimate of loss, in accordance of Section 74 of the Indian Contract Act, 1872. The Hon'ble court held in the leading case<sup>9</sup> regarding the liquidated damages provisions which must be fair and not excessive.

<sup>5</sup> 2020 SCC OnLine SC 562.

<sup>6</sup> (1999) 3 SCC 573.

<sup>7</sup> Section-73 of Indian Contract Act, 1872,

<sup>8</sup> Section- 10 the Specific Relief Act, 1963,

<sup>9</sup> *Kewal Krishan vs. Rajesh Kumar & Ors. etc.* Civil Appeal Nos. 6989-6992 Of 2021



If the other party does not fulfil its end of the bargain, the non-defaulting party has the option to cancel the agreement under Section 39 of the Indian Contract Act of 1872.<sup>10</sup> If the selling consideration is not paid as specified in the contract, the innocent party may deem the deal as null and void. The parties are put back in the same situation in which they would have been if the contract had not been made upon its rescission. This idea has been codified under section 64 of the Indian Contract Act, of 1872, which guarantees justice in cancellation of contracts.<sup>11</sup>

It is acceptable to forfeit a deposit or earnest money if the contract specifically allows it. According to Section 74 of the Indian Contract Act of 1872, the party who suffered the breach may keep the money as compensation as long as it is fair and not in the form of a fine. Fairness of forfeiture provisions is a topic that is frequently debated. In India, courts assess the proportionality of such provisions to make sure they don't serve as punitive measures<sup>12</sup>.

### DEFENCES AGAINST NON-PAYMENT

The term “**impossibility of performance**” refers to circumstances in which a party's ability to carry out their contractual duties is rendered objectively impossible. It is possible for this impossibility to be either subjective, specific to the persons involved, or objective, affecting everyone. A contract is invalid according to Section 56 of the Indian Contract Act of 1872 if it cannot be carried out because of an occurrence that the promisor was powerless to stop. The theory of contract frustration owing to impossibility is embodied in this section,<sup>13</sup> which is reproduced as under ;

#### **Contract to do an act afterwards becoming impossible or unlawful**

According to section 56, “a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful”.

A valid excuse for non-payment may exist if the non-payment is due to the other party's violation, which occurs when they break their contractual responsibilities. Sections 39 and 43 of the Indian Contract Act describe the repercussions of contract violations. According to Section 39, if one party does not carry out its obligations, the other party may terminate the contract unless that party has expressly stated by words or deeds that he/she intend for the relationship to continue.<sup>14</sup>

A statute of limitations is a period of time that must pass before a party can file a lawsuit. The non-payment issue could be used as an argument against the claim if it is brought up in court after the time frame has been passed. The Limitation Act, of 1963 establishes the applicability of statute of limitations for several sorts of cases in India. For instance, the limitation time for a lawsuit for violation of any contract is three years from the day, the contract is violated, as reflected under Article 55 of Indian Limitation Act, 1963<sup>15</sup>

When a party voluntarily relinquishes a right or claim, such as the right to request prompt payment, this is known as a waiver. Contrarily, estoppel precludes a party from claiming a specific fact or legal right, such as asserting non-payment when they have previously indicated that a payment delay is acceptable. A promise may be partially annulled under Section 63 of the Indian Contract Act, but it is up to the

<sup>10</sup> Supra note-7, Section 39.

<sup>11</sup> Ibid. Section-64

<sup>12</sup> Section- 74 of the Act

<sup>13</sup> Section -56 of Indian Contract Act, 1872,.

<sup>14</sup> Ibid. Section -39

<sup>15</sup> Article-55 of Indian Limitation Act, 1963,





promisee to decide whether to do so or not. This can happen if the promisee decides to forgo or put off the fulfilment of the promise.<sup>16</sup>

## CONCLUSION

It is obvious that the selling consideration is the foundation of every legally binding agreement, and that failure to pay it might have serious legal repercussions. A breach of contract occurs when one party does not carry out their financial commitments as stated in the agreement. Depending on the type and severity of the violation, there may be several legal remedies available. The non-defaulting party has the legal right to seek remedies including damages, specific performance, or even the termination of the contract when non-payment happens. Damages are intended to make up for the financial damage incurred by the non-defaulting party as a result of the breach. When it is difficult to locate an appropriate replacement due to the particular nature of the contract's subject matter, specific performance may be requested. On the other hand, rescinding a contract enables the parties to basically undo it and put themselves back in their pre-contractual positions. Any deposits or earnest money made by the failing party may also be kept by the non-defaulting party. These legal repercussions highlight the value of sale consideration and underline the legal system's dedication to protecting the integrity of contracts.

Contracts serve as the cornerstone upon which trust is constructed in the world of business and interpersonal interactions. They stand for a pledge made between parties and a shared understanding. In addition to having legal ramifications, when one party breaches a contract, it undermines the trust and dependability that are the cornerstones of both professional and interpersonal relationships. The importance of each party's promises must be understood by all parties to a contract. It is not only a legal duty, but also a moral and ethical obligation, to fulfil contractual obligations. Respect and trust are fostered by keeping one's word not only in the business realm but also in other areas of one's life where agreements are formed.

Furthermore, being aware of the legal repercussions of non-payment should act as a deterrent against carelessness or wilful violation. All parties should be encouraged to behave in good faith and abide by the terms of their contracts by being aware of the potential legal remedies available to the non-defaulting party. As a result, agreements are upheld, conflicts are reduced, and relationships are built in a more stable and reliable work environment.

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<sup>16</sup> Ibid.Section



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