259082 - He bought a car then he found a defect in it; does he have the right to demand compensation for this defect?

the question

I bought a car for 6,000 Saudi riyals, and I still owe 1,000 riyals, provided that the engine of the car is free of defects. With the first oil change for the engine, straight after purchasing it, I found that the oil level was very low. When I asked the previous owner about that, he told me that it was not a very serious issue. One year has passed, and I still was not able to earn the money to pay off the last instalment. Now I have discovered that the problem with the engine was already there when I bought it. Please note that I have paid 500 of the 1,000; do I have to pay the remaining balance, even though, if I had known about the defect from the beginning, I would not have bought it at this price?

Detailed answer

Praise be to Allah.

Firstly:

If it is proven that the item was defective before it was received by the purchaser, then the purchaser has the right to return the item and get back the money he paid for it. The scholars call this the option of cancelling a transaction if there is a defect.

If he wants to keep it and receive compensation, which is equal to the difference between the value of the item if it is sound and its value if it is defective, if that was agreed upon by mutual consent with the seller, then it is permissible, according to scholarly consensus.

But if the purchaser wants to force the seller to compensate him, then there is a difference of scholarly opinion as to whether that is permissible.

The majority of scholars disallow that, and say: The purchaser does not have the right to do anything except return the item and get his money back, or keep it as it is, and he is not entitled to any compensation. They said: That is because the issue of compensation is a new contract and a new transaction, so the seller must agree to that.

The Hanbalis are of the view that he has the right to keep the defective item, and accept compensation. They said:

- Because he only agreed to the purchase on the grounds that the item was sound, so if there is any shortcoming or defect in it, then the seller must reduce the price commensurate with the impact that the defect has on its value.
- They quoted as evidence the analogy with the fact that it is permissible to demand compensation if the item is defective and it becomes clear that defect is old, and the purchaser wanted to return it, but it developed another defect before he could return it. In this case, the seller has the right to demand compensation for the defect that developed when it was in the purchaser's possession.

Ibn Qudamah said:

If the purchaser chooses to keep the defective item and accept compensation, he may do that. This is the view of Is-haq.

Abu Hanifah and ash-Shafa`i said: He has no option but to keep it or return it, and he has no right to compensation, unless it is not possible to return it, because in a case in which a man had purchased a sheep whose udder had been tied [so that it would retain milk and become full] to make her look as if she produced a great deal of milk, the Prophet (blessings and peace of Allah be upon him) gave the man who had purchased the sheep the choice between keeping the sheep without compensation or returning it. And because the purchaser has the right to return the item, he has no right to any part of its price, like one who has the choice between any two options.

In our view, it seems that he was not aware of the defect, so he has the right to compensation, the same as if a fault were to develop when it was in his possession.

Because he is missing out on part of the item, he has the right to demand compensation, such as if he bought ten gloves [that is, five pairs of gloves], then it turned out that there were only nine gloves, or if he damaged the item after the sale.

As for the sheep with the tied-up udder, there is no defect in it; rather he has the option of cancelling the deal on the grounds that he was deceived, not because there is some defect. Therefore he is not entitled to compensation if refuses to pay him compensation.(*Al-Mughni*, 4/111-112).

The most correct view is that of the majority of scholars. It is the view that was favoured by Shaykh al-Islam Ibn Taymiyah and was regarded as most likely to be correct by Shaykh Ibn `Uthaymin (may Allah have mercy on them all).

Shaykh Ibn `Uthaymin said:

If someone buys a defective item knowing that it is defective, he has no right to return it. If he buys a defective item not knowing that it is defective, then he has the choice between returning it and getting his money back, if he had paid for it in advance, or keeping it and he is entitled to compensation…

But the more correct view is the view of Shaykh al-Islam [Ibn Taymiyah – may Allah have mercy on him], which is that the purchaser has the choice between returning it or keeping it without compensation. As for compensation, we say:… It is a new contract that cannot be forced on the seller.

But if we assume that the seller was deceitful, then in that case the view that is more correct is that he should be forced to pay compensation, if the purchaser chooses that, by way of punishing him.

However, if we know that the man was honest and sincere in his intention, then the defect appeared, how can we force him to pay compensation? He says: I only sold this item for this price, so if you want to keep it for the price I sold it for, all well and good; otherwise, bring it back to me –

in that case, how can we force him to pay compensation?

In that case, the more correct view is that the purchaser has the choice between returning the item and getting his money back in full, or keeping it without compensation, because in reality compensation is a transaction. But if we know that the seller was deceitful, then in that case we may choose the harsher measure and say that the purchaser has the choice: if he wishes he may keep the item and receive compensation, or if he wishes he may return it.(*At-Ta`liq ‘ala al-Kafi*, 1/215).

Secondly:

If someone buys a defective item, then finds out about the defect after buying it, but he does not return it – rather he keeps it and uses it – then he has no option, as he has waived his right to return it, because using it after finding out about the defect indicates that he accepts it.

This is what appears to be the case with the questioner, because the questioner found out about the defect with the first oil change, and every time he changed the oil he became more certain of the defect and became more aware of its extent, so his keeping the car for this long time (a year) invalidates his right to return it.

Ibn Qudamah said:

With regard to returning a defective item after some time has passed, if the purchaser found out about the defect but delayed returning the item, that does not cancel out his option to return it, unless there is some evidence to indicate that he accepted it. This was stated by Abu’l-Khattab.(*Al-Mughni*, 9/104).

Ar-Ruhaybani said in *Matalib Ulin-Nuha*, 3/119:

The option to return a defective item after some time has passed remains in effect… because the option to return an item is prescribed in the case of shortcomings or defects, so it cannot be cancelled due to some time having passed, as is also the case with qisas (legal retribution). So this option cannot be waived unless there is evidence that the purchaser accepted the item with the

defect, because any indication that the purchaser accepted the item with the defect is to be taken as an explicit statement of acceptance, such as his using or disposing of the item after finding out about the defect and before cancelling the transaction, by selling it, renting it out or lending it; or before deciding to keep the item; or such as using the item but not by way of testing it. End quote.

And Allah knows best.