263192 - If someone buys something, then finds out that the price was unfair, 12% above the regular price, does he have the option to cancel the deal?

the question

Some years ago, I bought a piece of land to build house. The property dealer sold the plot to me at a price significantly higher than the market price (12% to be precise). I came to know about it later when my uncle told me about it and I confirmed the prices of nearby land on the Internet. Being unaware, I also paid my portion of the service charges under the impression that this is the only reward he is going to get for providing his service. After purchasing the land, I gave the contract of building house to the same property dealer as he was in parallel running a construction company and we had already built a customer-seller relationship. During construction, the property dealer died. After his death, his brother in law (brother of his wife) took over all his pending contracts and promised to complete the construction of my house. Since the new constructor (the brother in law) did not know about the exact amount that I already paid to the deceased man, I only paid him the remaining money after deducting the 12% of the price of land to reclaim the halal money that was deceptively taken from me at the time of land purchase, and this was the only way to reclaim the money. I am divided in two feelings. One that reclaiming my money the way I did will make the life of the deceased in the hereafter easier. Second if I did something wrong then I should correct my mistake because I don’t want to bear the burden of this 12% money after I die.

Detailed answer

Praise be to Allah.

Firstly:

If someone buys something, then finds out that the price was 12% more than the market price, then he has been cheated in an unfair deal, but does he have the right to cancel the deal because

of that cheating or not?

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The jurists divided unfair deals into that which is excessive and that which is minor. In the case of that which is minor, there are no consequences, but in the case of that which is excessive, he has the option to cancel the deal in some cases.

However, they differed regarding the definition of what is counted as excessive. Some of them limited it to cases in which the price charged was one third greater than the market price, or one fifth greater, and some said that the matter should be referred to what is customary among traders.

The Hanafis defined it as that for which no appraiser would estimate such a price, meaning that no expert on prices would put its value at that price.

Ibn `Abidin said in his *Hashiyah* (5/143): His comment 'that for which no appraiser would estimate such a price' is the correct view, as is stated in *Al-Bahr*. What that means is: if the item was sold for ten, for example, then one appraiser says that it is only worth five, and others said that it is worth six or seven, then this is excessive unfair pricing, because this price was not quoted by any of the appraisers. This is in contrast to a case in which some of them say it is worth eight, some say it is worth nine and some say it is worth ten; in that case, the unfair pricing is described as minor. End quote.

In *Al-Mawsu`ah al-Fiqhiyyah* (20/150), it says: Regarding what is meant by excessive unfair pricing according to the Hanafis, the correct view among the Malikis and one view among the Hanbalis: what matters when determining what counts as unfair pricing is what is customary among traders. Even though the way in which they described it differs, it all points to this meaning.

What matters is what the professional appraisers say, because they are the ones to whom people refer to decide about defects (in goods) and other matters which require expertise in buying and selling.

The second view among both the Malikis and Hanbalis is that what matters with regard to unfair pricing is that the price is one third above the market price.

The third view among the Malikis is that it is anything more than one third above the market price. End quote.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: If someone buys an item for 2500 riyals, when it is only worth 1500, if the seller knew that the real price was 1500 riyals, but he realized that this man was a stranger who did not know the prices, and he sold it to him for 2500, then he is sinning and it is not permissible for him to do that. If the purchaser finds out about that, then he has the option of cancelling the deal. This is called the option of cancelling the deal because of unfair pricing, because an increase of 1000 is too much.

But if the unfair price increase was minor, such as 10%, that does not matter, and it is common practice for people to charge a little more in this way.

But if the seller did not know – meaning, for example, that the regular price for this item was 2500, then the price dropped and the seller was not aware of that, then the seller is not sinning, but the purchaser still has his rights and he has the option of cancelling the deal, because he was sold something at an unfair price.(*Liqa' al-Bab al-Maftuh*, 56/14).

What appears to be the case is that 12% is not excessive, especially since the price of land fluctuates by such amounts. Therefore the buyer does not have the option of cancelling the deal

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The majority of jurists are of the view that there is no option to cancel the deal because of unfair pricing, unless the seller was cheating the buyer by being untruthful in his description of the item, or he claims that he paid such and such for it, but he is lying.

The Malikis, according to one view among them, and the Hanbalis say that a purchaser who is inexperienced, does not know the value of things and is not good at bargaining has the right to cancel the deal.

Ibn Qudamah (may Allah have mercy on him) said: The third one is the inexperienced purchaser: if he is charged an unfair price that goes beyond the bounds of what is normal, then he has the option of either cancelling the deal or going ahead with it. This is the view of Malik…

The inexperienced purchaser is one who is unaware of the value of goods and is not good at bargaining.

Ahmad said: The inexperienced purchaser is one who is not good at bargaining, so it is as if he went to the seller and paid for the item without bargaining, and was not aware that the seller was charging an unfair price.

As for one who has knowledge and experience, and had he thought about it he would have realized that the price was unfair, if he hastened to make the purchase immediately and was charged an unfair price, then neither party has the option of cancelling the deal.(*Al-Mughni*, 3/497).

The option of cancelling in the event of unfair pricing may be achieved by returning the item and taking back the money paid, as noted above, and is not done by keeping the item and receiving the difference in price from the seller.

What appears to be the case is that you do not have the option of cancelling the deal, because the unfair pricing was not excessive.

Based on that, you were wrong to deduct this amount and conceal it from the brother-in-law of the broker.

You have to return this money to him, even if that is by indirect means, and you must also repent. You can tell him that after reviewing the accounts, you found that he was owed some money, and the like.

And Allah knows best.