129847 - He bought an apartment on the basis that it would be a certain area (square footage), and it was built larger. Does he have to pay the difference?

the question

I bought an apartment in a building from a residential company after examining it (90% were ready for viewing), then I made a contract in which the description, location and price were mentioned, and the area according to the plans was also mentioned. They said that it was between 260 and 270 square meters. At the time of recording ownership after it was ready, they said: We will register it in your name and you can move in. But we found out that the area was 291 square metres, i.e., they had made a mistake in calculating the area and of course the plans did not change, i.e., there was an additional area of between 20 and 30 square metres. Now they said: We leave it up to you pay us extra money for the difference in price and I have moved in. Am I obliged to pay this according to sharee'ah or not? Please note that they said in the beginning, We found the area to be 230 square meters, until they told me, and I said it is up to you, then they came back after one week and said: We found it to be 291 square meters. Please note that they are putting pressure on me to pay, and I do not know what to do. Please advise me, may Allah bless you.

Detailed answer

Praise be to Allah.

If a person sells land or a house on the basis that it is a certain area, then it turns out to be more than what was estimated, the sale is valid and the one who was unaware of the additional area and it does not suit him, has the option to go ahead with the transaction or cancel it.

It says in Zaad al-Mustaqni': If he sells the house on the basis that it is ten cubits, and it turns out to be more or less, the transaction is valid and the one who was unaware and it does not suit him has the option (of going ahead or cancelling).

In this case the seller cannot be told to take the extra area which is approximately twenty square metres. Hence we say that he has the choice of going ahead with the sale or cancelling it.

If the buyer does not have the money to pay for the extra area or does not need it, he also has the choice and he is not obliged to buy the extra area, because it was not covered in the contract.

To sum up: both of you have the right to cancel, unlessas the seller decided to give you the additional area for free, in which case you do not have the choice, because you are not losing anything.

If he insists on being paid the price of the additional area, then you may either cancel the sale or agree on the amount for the additional area, and working out an agreement on the price is better.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: If you both agree on what has been subtracted or added, that is permissible, because you both have the right. If you agree to waive it, such as if he says, ‘I sold it to you on the basis that it was 100 square meters, and it turned out to be 90 square meters, and you both reach an agreement to waive such and such of the price and agree to that, there is nothing wrong with it.

End quote from al-Sharh al-Mumti‘, 8/259

And Allah knows best.