258447 - Is It Permissible in Islam to Return a Car If You Find Defects?

the question

My brother bought a used car, and he kept it for more than two years, driving it and travelling in it, and nothing happened to it during this time. More than two months ago, my brother sold this car “as is”, after a mechanic brought by the purchaser had checked it, and after it had passed the roadworthiness test that is compulsory before selling a car here in Morocco. Now the purchaser of the car has got in touch with my brother and told him that the car has a defect, namely that the roof has been replaced, which means that it was probably involved in an accident. My brother is now confused: is there any sin on him? Is this sale regarded as valid according to Islamic teachings? Does my brother have to compensate the purchaser for this defect? Please note that he sold his car because he needed the money.

Summary of answer

If someone buys a car then discovers a defect in it, and it is the type of defect that could detract from its value, then he has the choice between returning it or keeping it and receiving compensation from the seller for this defect. The option to return the defective item is established, regardless of whether the seller was aware of the defect or not, and regardless of whether the purchaser examined the item or not. Once the defect is discovered, he has the option [of cancelling the deal].

Detailed answer

Praise be to Allah.

Is it permissible in Islam to return a car if you find defects?

If an individual buys a car and subsequently discovers a defect that could diminish its value, they have the option to either return the car or choose to keep it while receiving compensation from

the seller for the identified defect.

The scholars call this compensation an indemnity.

It says in Kashshaf Al-Qina` (3/218): “If someone buys a defective product and was not aware of it at the time of the purchase, then he has the choice, regardless of whether the seller was aware of the defect and concealed it from the purchaser, or he was not aware of the defect. …

The purchaser has the choice between returning it, so as to make up for what he has lost and to alleviate any harm that may affect him if he keeps it, as a result of the reduction in the value of the item…

Or, if he returns it, he should receive the price in full, because by cancelling the deal, the purchaser is entitled to take back the price in full. …

Or he may keep the item, and receive compensation for the defect, even if it is possible to return it, whether the seller likes it or not, because the two parties agreed to the deal on the basis that the payment was in return for the item, and each part of the item could be valued in monetary terms, but when there is a defect, it is as if part of the item is missing, so he has the right to receive money instead, and this is the indemnity (compensation).”

Does it make a difference if the seller was aware of the defect or not?

Thus it is known that the option to return the defective item is established, regardless of whether the seller was aware of the defect or not, and regardless of whether the purchaser examined the item or not. Once the defect is discovered, he has the option [of cancelling the deal].

If your brother was not aware of the defect, then there is no sin on him, but the purchaser has the choice between returning the car or keeping it and receiving compensation.

The compensation is the difference between the value of the defective car and its value if it was in sound condition; this amount is to be deducted from the price.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said, explaining that:

“The word indemnity (or compensation) refers to the difference between the value of the item in sound condition and the value of the defective item.

He said value, and he did not say price, because there is a difference between the value and the price, which is: the value is the market price of the item, and the price is what is agreed to in the transaction.

So if you buy something for six that is worth eight, then its value is eight and its price is six …

Hence he said: The difference between the value of the item in sound condition and the defective item is that the item is to be evaluated when it is in sound condition, then it should be evaluated when it is defective, and the difference between the two should be worked out. That is the indemnity (compensation) that should be deducted from the price.

The evaluation should be done at the time of making the deal, not at the time when the defect is discovered, because the value may vary between the time when the deal is made and the time when the defect is discovered." (Ash-Sharh al-Mumti` 8/318)

So your brother has to go back to the one from whom he bought the car in the first place, and ask him for compensation for the defect.

Is there an option for receiving compensation?

What is mentioned above, that the purchaser is the one who is to make the decision, and that he has the right to keep the car and ask for compensation, is the view of the majority of scholars.

Shaykh Al-Islam Ibn Taymiyyah (may Allah have mercy on him) was of the view that there is no option of receiving compensation; rather the purchaser may either return the item or keep it without compensation, and there can be no compensation except with the consent of the seller.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: “The words “or he may return it and

take back the price” mean: you have the right to return the item, cancel the deal and take back the price. So the purchaser has the option [of cancelling the deal]. This is the view of the jurists (may Allah have mercy on them).

But Shaykh Al-Islam said: Either he may keep it without compensation, or he may return it. As for compensation, the consent of the seller is essential, because it is a transaction.

So the seller may say: I sold this thing to you; either keep it or return it. As for compensation, this is regarded as a new transaction.

The Shaykh’s view has merit, but if we know that the seller is a cheat – meaning that he was aware of the defect but concealed it – then in this case the choice is between keeping the item and receiving compensation, or returning it.

This ruling is applicable in the case of concealing defects and in the case of charging too much for the item." (Ash-Sharh al-Mumti` 8/319)

And Allah knows best.