

## **215358 - Ruling on what some banks do of buying an item for the purpose of murabahah and stipulating a condition that gives the option to the buyer of going ahead with the transaction or cancelling it**

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### **the question**

Dear Shaykh, the company I work for is offering the opportunity of taking a home purchase loan to its employees who have worked for five years with them. This is through some banks (al-Rajhi or Samba) as follows: after the employee chooses a house that he wants to buy, he submits an application to the company to get approval for the home purchase loan. After the company approves the application, the employee goes to one of these two banks to submit an application to purchase a house. The bank studies the application, then the bank buys the house and sells it by instalments to the employee. What I know is that the bank signs an agreement about its desire to buy the house with the real owner of the house for twenty days, during which the owner must not sell the house, so that the bank will be able to protect its money in case the employee changes his mind about signing the agreement, so that the bank will not have the problem of buying properties that the customers change their mind about buying. There is a prior agreement between the company and the two banks on the percentage of murabahah or profit (if I am saying that right) that will be earned through the home purchase loan program, which is 3.1% for the employees in a period of no more than fifteen years, meaning that the company will pay this rate of profit and deposit it every month with the employee's salary in that bank, so long as the employee remains with that company, and the company is committed to transferring his salary and keeping it in that bank. The bank will deduct the monthly payment in addition to its own percentage of the profit as soon as it receives it. So the buying and selling will be directly between the employee and the bank, and the company will not be a party to it, meaning that if the employee resigns from the company, the company will incur no consequences from that contract and the employee will still be obliged to pay the instalments and the percentage of profit agreed upon with the bank. Is this transaction and this contract sound and not akin to any kind of riba-based contract? And is the agreement of the bank with the original owner of the property for twenty days sound, and does it mean that the bank is

protected from selling what it does not own in reality? Is it permissible for the employee to buy the house from the bank by means of such a contract?

### **Detailed answer**

In reality, this transaction is what is called a murabahah transaction for the one who instructs another party to buy something for him.

We have previously explained that this kind of transaction is permissible if it meets two conditions:

- 1.. That the bank takes possession of the house before selling it to the employee, so it buys the house for itself in a genuine purchase before selling it to the one who wants to buy it.
- 2.. That the bank takes possession of the house before selling it to the customer, in the sense that the seller empties the house and enables the bank to take possession of it.

If the transaction does not meet these two conditions or one of them, the transaction is prohibited.

It says in *Qararat Majma` al-Fiqh al-Islami*: In a murabahah transaction for the one who instructs another party to buy something for him, if it involves buying an item after it comes into the ownership of the one whom the purchaser asked to buy it for him, and that party took possession of it in the manner required according to Islamic teachings, it is a permissible transaction, so long as the one who was asked to buy it is liable for any damage that occurs before it is delivered, and he should agree to accept return of the item if it turns out that there is a hidden defect in it or there is any other reason for which it may be returned after delivery; and provided that the conditions of buying are met and there are no impediments to this transaction. (*Majallat al-Majma`*, 5/2/753, 965).

As the bank fears that if it buys the house, the employee of the company may change his mind about buying it, as a result of which the bank would be harmed, so when buying the house, the bank stipulates that it should have the option of cancelling the deal within a specific timeframe, and it has the right to return the items sold (the house) and cancel the deal within that period –

such as twenty days, for example – there is nothing wrong with that, because selling an item with the option of cancelling the deal is a proper kind of transaction.

The scholars (may Allah have mercy on them) have stated that such transactions are permissible.

It says in *Al-Mabsut* by as-Sarkhasi (30/237):

A man instructed another man to buy a house for one thousand dirhams, and told him that if he did that, the one who instructed him to buy it would buy it from him for one thousand and one hundred (1,100). But the one who was instructed to do that was worried that if he bought it, the one who had instructed him would not want to buy it. He said: Let him buy the house on the basis that he has the option to cancel for three days, and take ownership of it, then let the one who instructed him to buy it go to him and tell him: I will buy it from you for one thousand and one hundred, to which the one who was instructed to buy it should say: I agree... But if the one who instructed him to buy it does not want to go ahead with the purchase, the one who was instructed to buy it for him can return it to the first owner on the basis of the option to cancel. By doing this, he can ward off harm from himself. End quote.

Ibn al-Qayyim (may Allah have mercy on him) noted that there were some loopholes that are permissible to use, which will enable a person to get his rights without going against Islamic teachings. He said:

Example 101: A man says to someone else: Buy this house or this item from So-and-so for such and such an amount, and I will give you a profit of such and such for it. But the other man is worried that if he buys it, the one who told him to buy it for him may change his mind and not want it, and he will not be able to return it. The loophole is that he may buy it and stipulate that he has the option of cancelling the deal for three days or longer. Then he can say to the one who instructed him to buy it: I have bought it for the amount that you mentioned. Then if he buys it from him, all well and good, otherwise he will be able to return it to the original seller on the basis of the option of cancelling the deal. (*Ilam al-Muwaqi'in*, 4/29).

It says in *Qararat al-Hay'at ash-Shariyyah li Bank al-Bilad* (guideline no. 12):

It is permissible for the bank, in a murabahah contract when buying an item from the first seller, to buy it with the condition that it has the option of cancelling the deal, lest the customer change his mind. Then [the bank] can offer it to the one who instructed it to buy the item during the stipulated timeframe, and offering it to him does not invalidate the option of cancelling the deal. Then if the person who instructed the bank to buy it wants to go ahead with the purchase, all well and good, otherwise the bank can return it to the first seller. End quote.

But if the bank does not buy the house from its owner – rather it makes a deal with him stating that the bank is interested in buying the house and obliges the owner not to sell the house to anyone else during the agreed-upon period – this agreement does not mean that the house becomes the property of the bank, so if the bank sells it to the employee after that, then the bank has sold the house before taking ownership of it, and this is prohibited, as noted above.

And Allah knows best.