

354831 - Ruling on the seller stipulating a penalty clause if the purchaser cancels the transaction

the question

My question is about conditions in a transaction which were stipulated by the seller regarding the purchase of land by instalments. 1. If the purchaser fails to pay two consecutive instalments according to the payment plan, he is regarded as having defaulted, therefore there is no need for any warning or notification. In such a case, the seller has the right to terminate the agreement unilaterally and notify the purchaser in writing that it has ended. 2. If the purchaser ends the contract for any reason, the seller will allocate 30% of the purchase price as a stipulated penalty. After settling the penalty clause, the seller will return to the purchaser what remains of the instalments that had been made, in two equal payments, starting one month from the day when the contract was terminated, and the purchaser agrees not to demand any interest or compensation for the delay in repayment... etc. If this condition is not valid, what are the rights of the seller according to Islamic teachings, if the purchaser is unable to pay his debt, or he wants to get out of the contract? What are the valid conditions that the seller may stipulate in order to reduce the harm that would result from the purchaser getting out of the contract?

Detailed answer

Firstly:

There is nothing wrong with stipulating that the deal be cancelled if the purchaser defaults on two consecutive instalments, whether the purchaser is in financial difficulty or is well off but is taking too long to pay.

It says in *Kashshaf al-Qina'* (3/240): ... or [if] the purchaser is in financial difficulty, even with regard to paying some of the price, then the seller has the right to cancel the deal immediately, because the delay is detrimental to his interests. End quote.

It says in *al-Mawsu'ah al-Fiqhiyyah* (32/136): Ibn Taymiyah said that if the purchaser is in financial difficulty or is taking too long to pay, the seller may cancel the deal so as to ward off the harm to which dispute may lead. He said in *al-Insaf*: This is the correct view. End quote.

Secondly:

There is nothing wrong with the seller stipulating that if the purchaser cancels the deal – with no valid reason according to Islamic teachings that allows him to do that – he must pay 30% of the price, because the basic principle is that conditions are valid.

The seller may refuse to cancel the deal, because a sale is a binding contract, but he may agree to cancel it in return for this amount of money, and it is permissible to stipulate that in the contract.

The Prophet (blessings and peace of Allah be upon him) said: “The Muslims are bound by their conditions.” Narrated by Abu Dawud (3594); classed as sahih by al-Albani in *Sahih Abi Dawud*.

Al-Bukhari said in his *Sahih*: Ibn 'Awn said, narrating from Ibn Sirin: A man said to the one from whom he wanted to lease a mount: Bring your mount, then if I do not set out with you on such and such a day, then you will have one hundred dirhams. Then he did not go out [on that day]. Shurayh said: Whoever stipulates a condition for himself willingly, without being forced, is bound by it.

End quote from *Sahih al-Bukhari*: The Book of Conditions, Chapter on What Conditions are Permissible ... It says in a statement of the Islamic Fiqh Council concerning this issue: It is permissible to stipulate penalty clauses in all financial transactions, except in contracts in which there is a commitment to pay off a debt, because that is blatant riba (usury).

See the complete statement in the answer to question no. [112090](#).

Thirdly:

When cancelling a deal, the seller must return what the purchaser paid. If he stipulated that in the event of cancellation he will return the money in two equal payments, starting one month

after cancellation of the deal, and the purchaser accepted that, there is nothing wrong with it, because of what was noted above about the basic principle being that conditions are valid.

Thus it becomes clear that it is permissible to stipulate these conditions in the contract.

And Allah knows best.