326594 - Ruling on making a down payment to buy an apartment that is under construction, and ruling on receiving interest on that payment

the question

I had made a down payment to a real estate company to buy an apartment that was under construction, of which I will take possession in two years' time. The company pays interest on the down payment made by the customer during the construction of the unit. Is it permissible to accept this interest and give it to the company to cover maintenance costs for my apartment?

Detailed answer

Praise be to Allah.

Firstly:

It is permissible to agree to purchase a residential unit that has not yet been built, if it is described in such a way as to leave no room for ambiguity and prevent disputes. This is called a contract requesting something to be made to certain specifications ('aqd al-istisna'). For more information on that, please see the answers to question no. 136921 .

Secondly:

Once this contract has been drawn up, this down payment belongs to the company, because it is part of the price (for the apartment).

Based on that, any return on it belongs to them, and they are responsible for giving zakah on it. If we assume that the company puts it in a riba-based bank, there is no sin on you because the money is no longer yours.

Thirdly:

If the company gives you some of the interest on this money, it is not permissible for you to accept it, because any return that is stipulated or that is agreed upon in this contract will turn the amount of the down payment into something ambiguous.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said in *al-Fatawa al-Kubra* (4/39): The prohibition on all these types of trickery [loopholes] is very significant because of the report narrated by ‘Abdullah ibn ‘Umar, according to which the Prophet (blessings and peace of Allah be upon him) said: “It is not permissible to have a loan and a sale in the same transaction, or to stipulate two conditions in one transaction, or to earn a profit on something for which one is not liable, or to sell something that you do not possess.” Narrated by the five imams: Ahmad, Abu Dawud, an-Nasa’i, at-Tirmidhi and Ibn Majah. At-Tirmidhi said: It is hasan sahih. Thus the Prophet (blessings and peace of Allah be upon him) forbade combining a loan and a sale. If a loan is combined with a rental, this is combining a loan and a sale, or is similar to that.

Any favour that is combined with buying or selling or renting – such as gifts, loans, the harvest of a palm tree, favouritism in the case of musaaqaah (when trees are given to someone to tend and irrigate in return for a share of the harvest) and muzaara’ah (where one person supplies land and another cultivates it), and so on – is like a loan.

To sum up the meaning of the hadith: a transaction and a gift should not be combined, because the gift is only given because of the transaction and it is not a pure gift, and thus it becomes part of the transaction deal. But if the two parties agree that it is not part of the transaction deal, then they are combining two things that are completely different. So if someone lends one thousand dirhams to a man and sells him an item that is worth five hundred for one thousand, he has only been content to give him a loan because he bought the item for the increased price, and the purchaser was only content to buy the item at that increased price because of the thousand that he needed to borrow. Hence this transaction is not selling something for one thousand, and it cannot be described as a loan only; rather, in reality, he gave him a loan of one thousand and sold him an item for two thousand. End quote.

Fourthly:

But if the contract has not yet been completed, and this is only a promise to buy, and the down payment is only to show that you are serious, then it is not permissible for you to allow the company to invest it in riba, and you must refuse to deal with the company if it insists on that, because the money is yours and the company is acting as your proxy in handling it, therefore you will incur sin if it is put into an interest-bearing account (riba).

Moreover, the more correct scholarly view – which is what we base our answers on in this website – is that it is not permissible to accept what is called earnest money at this stage when you are only promising to buy.

For more information, please see the answer to question no. 229091 .

And Allah knows best.