97625 - Stipulating the condition of comprehensive insurance in lease-to-own contracts

the question

What is the ruling on buying a car via a lease-to-own scheme? Is the ruling different if the seller (the agent) stipulates that one must take out comprehensive insurance on the car?

Detailed answer

Praise be to Allah.

Firstly:

The lease-to-own contract has several forms, some of which are permissible and others are disallowed. One of the permissible forms is that in which there are two separate contracts, a lease or rental contract with a promise of selling, in which selling does not take place except by means of a separate contract after the end of the lease period, at which time each party is free to choose whether or not to go ahead with this sale.

See the answer to question no. 14304

The Islamic Fiqh Council issued a statement concerning this matter in its twelfth session held in Riyadh, 25 Jumada al-Aakhirah to 1 Rajab 1421 AH (23-28 September 2000 CE).

This statement was as follows:

Statement no. 110 (4/12) on the topic of lease-to-own contracts.

The international Islamic Fiqh Council belonging to the Organization of the Islamic Conference (OIC), in its twelfth session in Riyadh, Kingdom of Saudi Arabia, 25 Jumada al-Aakhirah to 1 Rajab 1421 AH (23-28 September 2000 CE).

After studying the research papers presented to the council with regard to the topic of lease-to-own contracts, and after listening to the discussion that took place on this topic with the participation of members of the council, experts and a number of fuqaha', the council determined the following:

Lease-to-own contracts:

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The guidelines on the permissible and disallowed types of this transaction are as follows:

1.Guideline on types that are disallowed: having two contracts at the same time regarding the same item

2.Guidelines on types that are permissible:

·Having two separate contracts that are independent of one another in terms of time, as the sale contract is drawn up after the end of the lease contract, or there is a promise to sell the item at the end of the lease period. Promise and choice are the same thing with regard to rulings.

·The lease should be genuine, not a cover for selling.

3.Liability for the leased item is borne by the lessor (the owner or dealer who leases the car to the customer), not the lessee (the customer who leases the car from the dealer). Thus the one who is leasing out the car is responsible for any problems that arise with the item that do not result from mishandling or negligence on the part of the lessee. The lessee is not obliged to pay anything if he is no longer able to use the item.

4.If the contract stipulates that the leased item must be insured, then insurance should be cooperative and Islamic, not commercial, and it is the responsibility of the owner and lessor, not the lessee.

5.What must be applied to the lease-to-own contract is the rulings on renting and hiring, throughout the period of the lease; the rulings on buying and selling apply when the item is sold.

6.Maintenance costs of the car, apart from running costs, are the responsibility of the lessor, not the lessee, for the duration of the lease period.

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Disallowed forms of the lease-to-own contract include the following:

1.Lease-to-own contract in which the leased item becomes the property of the lessee in return for what he paid of money towards the lease during the stated period, without drawing up a new contract, and the lease turns into a sale contract automatically and the end of the lease period.

2.Leasing an item to a person for a set fee and for a certain length of time, with a sale contract which stipulates that all agreed leasing fees should be paid throughout the stated period, or more time may be added to it in the future.

3.A contract for leasing in a true sense, but it includes a condition that the lessor may choose to sell the item to the lessee, and the sale is deferred until the end of the stated period (i.e., the end of the lease period).

This is what has been mentioned in fatwas and statements issued by scholarly organisations such as the Council of Senior Scholars in the Kingdom of Saudi Arabia.

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Permissible forms of this contract:

1.Lease contract in which the lessee may benefit from the leased item in return for a specific fee for the duration of a specific period, which is accompanied by another contract giving the item for free to the lessee provided that he pays all fees. That should be done in a separate contract, or a promise to give the item after paying all leasing fees. (This is in accordance with what is mentioned in a statement of the council with regard to gifts, no. 13/1/3 during its third session).

2.Lease contract with the owner giving the lessee the choice, after paying all due instalments throughout the lease period, of purchasing the leased item at the market price at the end of the

lease period. (This is in accordance with the council's statement no. 44 (6/5) during its fifth session.

3.Lease contract that allows the lessee to use the leased item in return for a specific fee for the duration of a specific period, accompanied by a promise to sell the leased item to the lessee after payment of the lease in full, for a price to be decided by both parties.

4.Lease contract according to which the lessee may use the leased item in return for a specific fee for the duration of a specific period, in which the lessor gives the lessee the option of purchasing the leased item at any time, so long as the sale at that time is done with a new contract, based on the market price (which is in accordance with the council's statement mentioned above (44/6/5), or based on whatever they agree on at that time.

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There are some forms of lease-to-own contracts that are the subject of differences of scholarly opinion. These need to be studied in a future session, in sha Allah. End quote.

Secondly:

From the statements of the council it is clear that if the contract includes insurance of the leased item, then it must be cooperative, Islamic insurance, not commercial insurance, and the cost thereof is to be borne by the owner and lessor, not the lessee, regardless of whether the insurance is comprehensive or partial.

The point is that it is not permissible to force the lessee or purchaser to take out insurance on the leased or purchased item. Rather this is to be done by the lessor, if he wants that, because liability on the leased item is the responsibility of the lessor, not of the lessee. The lessee is only liable in the case of negligence or misuse.

If the lessor stipulates that the lessee must insure the item, then this condition is invalid; it is like stipulating that the lessee is liable, but does this render the contract invalid or not?

It says in al-Mughni (5/311):

If the lessor stipulates that the lessee is liable for the item, then this stipulation is invalid, because it is contrary to the nature of the contract. But does it invalidate the rental contract? There are two scenarios, based on the conditions that render a transaction invalid. Ahmad said: With regard to stipulating that the user (lessee) is liable for the (leased) item, that is makrooh. Al-Athram narrated, with his isnaad from Ibn ‘Umar, that he said: Rental with the condition that (the user) is liable is not valid. It was narrated from the fuqaha’ of Madinah that they used to say: We do not rent anything with the stipulation that (the user) is liable. However, if you stipulate to the lessee that he should not take the leased item to the bottom of a valley, or take it by night, and so on, then he violates this condition and that leads to some damage as a result of that violation, then he is liable. But apart from that, it is not valid to stipulate that he is liable. If this is stipulated, then that condition is not valid. End quote.

It says in Durar al-Hukkaam Sharh Majallat al-Ahkaam (1/514): If he stipulates that the lessee is liable in the event of damage or ruin of the leased item without any misuse or shortcoming on his part, or he stipulates that the leased item should be returned to the lessor without anything wrong with it, then the lease is invalid. End quote.

The Maalikis also stated clearly that the lease is invalid if it is stipulated that the lessee is liable. See al-Mudawwanah (3/450); Bulghat as-Saalik 4/42

In al-Mawsoo‘ah al-Fiqhiyyah (1/286) it says:

It is not permissible to stipulate that the lessee is responsible for maintenance of the leased item, because that leads to ambiguity with regard to fees. Thus the lease is rendered invalid by this stipulation, according to the consensus of the madhhabs. If the lessee or tenant lives in the accommodation, he has to pay the rent of a similar property, and he has the right to claim back whatever he spent on maintenance, as well as wages commensurate with what people usually charge, if he did that with his (the lessor or landlord’s) permission, otherwise it is a gift (i.e., he did the work for free). End quote.

Conclusion:

Commercial insurance is haraam, whether the one who pays for it is the seller or the purchaser. But if the insurance is cooperative and Islamic, then it is permissible and the seller must arrange for it.

And Allah knows best.