136921 - Buying apartments by instalments before construction

the question

What is the ruling on buying an apartment by instalments directly from the company that owns the property, without any middleman, when the building is still under construction, and the closing date may be two or three years away?

Detailed answer

Praise be to Allah.

It is permissible to buy a house or apartment before it is built, if both parties agree on its description and construction details, in such a way as to leave no room for ambiguity, whether the price is paid in full or by instalments. This comes under the heading of "a contract requesting something to be made to certain specifications (*'aqd al-istisna'*)."

It says in a statement of the Islamic Fiqh Council belonging to the Organisation of Islamic Cooperation (OIC), no. 50 (1/6), regarding real estate financing to buy and sell homes: "There are Islamically-acceptable ways of buying and owning a home, so that there is no need to resort to haram ways. These include:

…D. Becoming a homeowner through "a contract requesting something to be made, to certain specifications" – on the grounds that this contract is to be regarded as binding. In that way, it will be possible to buy a home before it is built, in accordance with precise specifications and description which leave no room for ambiguity that could be a cause of disputes, without having to pay the entire costs up front. Rather payment may be delayed and made in instalments, as agreed upon, by paying attention to the conditions stipulated by the jurists regarding the "contract requesting something to be made to certain specifications," as the jurists made a distinction between this type of contract and salam contracts (payment in advance for something to be

delivered later on). End quote.

In another statement by the Council, explaining the conditions of “the contract requesting something to be made to certain specifications”, it says the following:

The Islamic Fiqh Council, during its seventh conference in Jeddah, in the Kingdom of Saudi Arabia, 7-12 Dhu’l-Qa‘dah 1412 AH/9-14 May 1992 CE, after reviewing the papers submitted to the Council regarding the topic of “contract requesting something to be made to certain specifications”, and after listening to the discussion that took place thereon, taking into consideration the objectives of sharia in facilitating people’s best interests and the fiqhi principles regarding contracts and business dealings, and because “the contract requesting something to be made to certain specifications” plays a role in promoting economic activities, creating opportunities for investment and stimulating the Islamic economy, has determined the following:

Firstly: “the contract requesting something to be made to certain specifications” – which is a contract that discusses the work and the final product that one party is committed to produce – is binding on both parties, if the terms and conditions are met.

Secondly: the following conditions are stipulated for “a contract requesting something to be made to certain specifications”:

a. The type of product to be made should be clearly stated, with its specifications and required characteristics.
b. The timescale must be stated.

Thirdly: in “a contract requesting something to be made to certain specifications” it is permissible to delay the entire payment, or to pay it in instalments at set intervals and set times.

Fourthly: It is permissible to include penalty clauses in “a contract requesting something to be made to certain specifications”, in accordance with whatever the two parties agree on, so long as there are no extenuating circumstances.

And Allah knows best."(*Majallat al-Majma‘* issue no. 7, vol. 2, p. 223).

Conclusion: It is permissible for you to buy an apartment by instalments in a building that is still under construction, on condition that it be described clearly, with no ambiguity, and that the date of closing is specified.

And Allah knows best.