177994 - Purchasing houses by instalments, with a condition stipulating a penalty for any delay in payment

the question

Here in America some homeowners have problems in paying the instalments on the loan that they took from the bank to buy their houses, so the banks repossess the houses, as is allowed by law and in accordance with the contracts between them and the borrowers, then the banks offer the houses for sale after adding to the original price the value of the interest over the next thirty years, then the purchaser buys the house from them and pays off instalments, which means paying a fixed sum every month.

Is this permissible according to Islam?

Of course the scenario in this case is different from the usual scenario in which a person borrows money then goes and buys a house himself, as in this case the scenario involves buying a specific house, and not borrowing money, but the price is rather high, seeing that the bank has added to it the value of the interest, but on the other hand it divides it into instalments to be paid over thirty years. Another scenario that is similar to the first is where some developers build houses and offer them for sale for a higher price than similar houses, because they also do what the banks do, that is they add the value of interest over the next thirty years to the original price of the house, then the transaction is done in the same manner as the banks do, whereby the purchaser pays a fixed amount of money every month. Of course there is a penalty if the person fails to pay any instalment; in that case he has to pay a penalty that is added to that instalment, as a punishment for delay in payment. This is something that is very common, not just in paying instalments for houses; it is even done in the case of electricity bills and student loans, etc – if a person delays payment, then he must pay a penalty, and of course the penalty is only applicable to the instalment of that particular month. In other words, it does not apply to any other instalment, unless the same thing happens again; if the failure to pay or the delay in paying occurs again, then the penalty is charged again, and so on.

What is the ruling on this too? Is it permissible to buy such houses?

Detailed answer

Praise be to Allah.

Firstly:

if the bank or the developer owns the house – i.e., it has bought it from its agents or others, or from the builder – then it may sell it for a price to be paid by instalments that is higher than the price if it is paid for immediately, and it does not matter if the profit is worked out in the same way as interest is worked out, or if the profits are increased according to the increase in the period of instalments, so long as it is purchased for a specific price that will not increase. For example, if the price of the house is 100,000, but it is sold for 120,000 to one who will pay the price in instalments over twenty years, or it is sold for 130,000 to one who will pay the price by instalments over thirty years, that is permissible on condition that there be clear agreement on one of these options.

Secondly:

It is not permissible to stipulate that interest is to be paid, such as if the bank says that the price of the house is 100,000 and the interest is 30,000; rather the interest should be incorporated into the price (and not itemised separately), as stated above.

It says in a statement of the Islamic Fiqh Council on the topic of selling by instalments:

The Islamic Fiqh Council, in its sixth conference that was held in Jeddah in the Kingdom of Saudi Arabia, 17-23 Sha'baan 1410 AH/14-20 March 1990 CE, after studying research papers that were submitted to the Council on the topic of selling by instalments, and listening to the discussion that took place on this topic, has determined the following:

1.

It is permissible to increase the price to be paid later in relation to the price to be paid on the spot; it is also permissible to state the price if paid immediately, and the price to be paid in instalments at specific intervals, but the sale is not valid unless the two parties both state definitively whether

the deal is based on immediate payment or deferred payment. If the agreement to the transaction is done with uncertainty or hesitancy as to whether the deal is based on immediate payment or deferred payment, in the sense that there is no agreement on a fixed price, then it is not permissible according to Islam.

2.

It is not permissible, according to Islam, in the case of deferred payment to include in the contract a figure reflecting interest to be paid on the instalments that is listed as a separate figure from the price if payment is made immediately, in such a way that it is connected to the timescale, regardless of whether the two parties agreed to a percentage of interest or they connected it to the current interest rate.

3.

If the purchaser delays paying instalments from the time stipulated, it is not permissible to compel him to pay any additional amount to the debt he owes by prior stipulation or without prior stipulation, because that is riba, which is prohibited.

4.

It is haraam for a borrower who is well off to delay payment of instalments that have become due, but at the same time it is not permissible, according to Islam, to stipulate that compensation be paid in the event of delayed payments.

5.

It is permissible, according to Islam, for the seller who is selling by instalments to stipulate that payments be brought forward from the due dates if the borrower delays making some payments, so long as the borrower has agreed to this condition at the time of the contract.

6.

The seller does not have the right to retain possession of the sold item after it has been sold. But it

is permissible for the seller to stipulate that the purchased item be held in pledge with him so as to guarantee his right to payment in full of the remaining instalments.

End quote from Majallat al-Majma‘ (issue no. 6, vol. 1, p. 453)

Thirdly:

It is not permissible for the contract to contain stipulation of a penalty to be paid in the event of delay in payment of one instalment, because that comes under the heading of riba which is haraam, as stated above in the report of the Fiqh Council.

This applies to all debts, such as electricity bills and student loans. It is not permissible to stipulate a penalty in the event of late payment. Based on that, it is not permissible to buy a house from the bank or developer if this condition is present, because signing such a contract is committing oneself to it, and committing oneself to riba signals approval thereof – and that is haraam.

The Muslims should come together and cooperate in order to convince banks and homeowners to cancel this condition, and they should provide some guarantees to reassure homeowners that they will get their rights.

Fourthly:

If the borrower is unable to pay off his debt, and the bank sells his mortgaged house, it is permissible to buy it subject to two conditions: that the owner of the house give his permission, or that the house be sold on the instructions of the Islamic judge, and that it should be sold for the same price as similar houses. If these conditions are not met, it is not permissible to buy it. Please see question no. 178394 .

And Allah knows best.