229091 - If the agent takes the money ahead of time, does that come under the heading of selling something which he does not possess?

the question

What is the ruling on the middleman who goes between the vendor and the purchaser? For example, the middleman who asks for money to be transferred to him before he takes possession of the goods? I asked a middleman to buy some goods for me from a certain store, and he asked me to transfer the money to him before he went to the store, on the grounds that some people mess about with them and cancel their request after he buys the goods, and so on. Is it permissible for him to do that? I refused to transfer the money, because I think that this comes under the heading of selling what one does not possess, but I do not know whether I am right or not?

Summary of answer

It is not permissible for the middleman to ask the customer for the price of the item, or ask for a down payment or a payment in advance before taking possession of the item, so as to avoid coming under the Islamic prohibition on selling what one does not possess.

Detailed answer

Praise be to Allah.

Firstly:

There is nothing wrong with the middleman receiving orders from the customers, then going to buy things from the stores and selling them to them, with a margin of profit. This is one form of profit-sharing with the one who placed the order for purchase, which is permitted by most contemporary scholars, and statements have been issued to that effect by fiqh councils.

This does not come under the heading of selling what one does not possess, and it is not included in the words of the Prophet (blessings and peace of Allah be upon him): “Do not sell what you do not have.” That is because what usually happens between purchasers and middlemen comes under the heading of a promise to buy and sell, but it is not a commitment to buy, and the deal is only done after the middleman buys the item and takes possession of it.

See the answers to questions no. 224408 , 126452 .

Secondly:

The condition of this transaction being permissible is that the initial agreement between the purchaser and the middleman should not go beyond a mere promise in which both parties have the option to go ahead with the deal or cancel it. But if there is a firm commitment from both parties or one of them, then the transaction comes under the heading of selling what one does not possess, because the contract was drawn up before the middleman took possession of the goods.

Imam ash-Shaafa‘i said: If one man shows another man a product and says: Buy this for me, and I shall give you a profit of such and such, then the man buys it, this purchase is permissible.

The one who said “I shall give you a profit on it” has the option: if he wishes, he may go ahead and buy it, or if he wishes he may cancel the deal.

Similarly, if he said: Buy me an item – and he describes it to him – or he says: Buy me any product you want, and I shall give you a profit on it, it is all the same. The first transaction is permissible, and they have the option of cancelling the second transaction, but if they renew it, it is permissible.

If they conclude the deal and commit themselves to the transaction from the outset, then this is null and void on two counts:

1.. Because they committed themselves to this transaction before the seller took possession of the item

2.. Because of the risk involved in the deal, when he said, “if you buy it for such-and-such a price, I will give you such-and-such as profit.” *Al-Umm* by ash-Shaafa‘i, al-Wafa’ edn. (4/75).

Imam ash-Shaafa‘i regarded the commitment to the first transaction as coming under the heading of selling what one does not possess.

In a statement of the Islamic Fiqh Council (40-41), it says: The binding promise with regard to profit-sharing is similar to the regular type of transaction, because it stipulates that the seller should take possession of the item, so that there will be no infraction of the Prophet’s prohibition on selling what one does not possess. End quote.

In *Fataawa al-Lajnah ad-Daa’imah* [Fatwas of the Permanent Committee – under the leadership of Shaykh Ibn Baz] (13/237) it says: If he comes to an agreement with him that he will sell it to him after he takes possession of it, and then he takes possession of it, then it is permissible, because it is a promise to buy, but it is not a firm commitment to do so. After that they may carry out the transaction in fulfilment of the promise. It is also permissible for him to sell it to someone else, just as it is permissible for [the purchaser] to buy something other than this particular car. End quote.

Shaykh Muhammad Sulaymaan al-Ashqar (may Allah have mercy on him) asked a question of Shaykh Ibn Baz (may Allah have mercy on him) concerning this matter, and the Shaykh’s reply was as follows:

I may tell you that if the customer and the bank referred to agree to buy a product, then the customer should not bear any expenses until the transaction between him and the bank is completed, and after the bank takes possession of the item and has the power to dispose of it. Before that, the transaction is invalid and the customer should not bear any costs. The promise to buy does not make it binding on him to commit to any of the expenses that the bank incurs in order to purchase the product; rather the bank should cover all of that.

End quote from *Bay‘ al-Muraabahah* by Dr. Muhammad Sulaymaan al-Ashqar, p. 54-55.

Shaykh as-Siddeeq ad-Dareer said: Profit-sharing with the one who instructs someone to purchase

something for him and promises to buy it, if that promise is madebinding, will lead to selling what one does not possess, because there is no difference between one person saying to another, “I will sell you such and such for such and such a price” when the item is not in his possession, and one person saying to another: “Buy such and such, and I commit myself to buying it from you for such and such a price.” Selling what one does not possess is prohibited because of the hadith, “Do not sell that which you do not have.” This ruling is not altered by the fact that the one who instructs the bank to purchase something for him is going to draw up a new sales contract after the bank buys the item and offers it to the one who gave instructions to purchase it, so long as each party is obliged to draw up a contract on the basis of this promise. End quote from *Majallat Majma‘ al-Fiqh al-Islami* (5/742(. See also: *Fiqh an-Nawaazil*, by Shaykh Bakr Abu Zayd (2/97).

Thirdly:

It is not permissible for the middleman – before taking possession of the item – to ask for the price or part of it in advance, to guarantee that the purchaser is serious. That is because taking this money from the client before purchasing the item indicates that the deal between them is not merely a promise to buy; rather it is a firm commitment, and this money is in fact to confirm and guarantee that commitment.

This is contrary to what is mentioned above about the stipulation that the promise should not be binding on both parties or one of them.

It says in a statement of the Islamic Fiqh Council about down payment: The promise to purchase does not come under the heading of profit-sharing when they make a promise; rather the deal only takes place in the following stage, after having made the promise (that is, when the item becomes available).

End quote from *Qaraaraat wa Tawseeyaat Majma‘ al-Fiqh al-Islami* (p. 82).

According to a statement of the Sharia Council of the al-Rajhi Bank: In the case of profit-sharing, it is not permissible to stipulate that a down payment should be made. Rather the one who is instructed to buy the property should buy it for himself and by himself, first of all, then sell it to the

one who gave him those instructions. The council did not regard it as permissible to stipulate that any payment in advance or down payment should be made, because the one who issues instructions to buy is not committed to buying in the case of profit-sharing. This stipulation makes it binding.

End quote from *Qaraaraat al-Hay'ah ash-Shar'iyyah bi Masraf ar-Raajhi* (1/330).

According to a statement of the Sharia Council of Bank al-Balad: It is not permissible for the bank to take from the customer any sum of money at the promise stage, in any form, whether it is to show that he is serious, or it is a payment in advance as a guarantee on the part of the customer, to be deducted from the price of the item that he is going to buy, or a down payment, or any other lump sum.

End quote from *Qaraaraat al-Hay'ah ash-Shar'iyyah li Bank al-Balad*, statement no. 15.

Moreover, the risk of the purchaser changing his mind is like any other risk that traders usually face in their business. The nature of any kind of trade is that one may make money or lose money.

So as to avoid the risk of possible loss if the purchaser changes his mind, the middleman may buy the item with the option of cancelling the sale, so that he will be able to return it if the purchaser refuses to go ahead with the deal.

Ibn al-Qayyim said: One man said to another: Buy this house or this item from So-and-so for such and such, and I will give you a profit on it of such and such. But he is afraid that if he buys it, the other man may change his mind and he will not be able to return it.

The way around that is for him to buy it, stipulating that he has the option of returning it within three days or more, then he can say to the one who instructed him to buy it: I have bought it at the price you wanted. If he agrees to buy it from him, all well and good, otherwise he will be able to return it to the seller on the basis of the option to cancel the deal.

End quote from *I'laam al-Muwaqqi'een* (4/29).

The permissibility of that has already been explained in the answer to question no. 215358 .

And Allah knows best.