294673 - Ruling on joint purchase of property with the bank, after which the bank sells its share to the customer on the basis of muraabahah (profit-sharing)

the question

There is an Islamic bank in Germany which gives loans for house purchase, and I want to make sure whether this transaction is permissible. The bank sets up a partnership with the purchaser, and the house is bought in the name of this registered partnership, on the basis that the bank will pay 65% of the price of the house, and the customer will pay 35%. Later on, the bank sells its share to the purchaser on the basis of muraabahah, paying a fixed amount that does not increase for ten years. If the purchaser is unable to pay off this amount within the stipulated time, the bank will give him extra time. If that is not possible, then it does not increase the interest rate; rather the file is transferred to the government. Is this loan permissible?

Detailed answer

Praise be to Allah.

Firstly:

This transaction is not a loan; rather it is a diminishing-share partnership, and there is nothing wrong with it if it complies with shar'i guidelines.

A statement concerning that was issued by the Islamic Fiqh Council, which you can read in the answer to question no. 150113.

The most important of these guidelines are two:

1. That it is not permissible to stipulate buying and selling in this type of partnership; rather the two parties may share ownership of the house, and the bank may give a separate promise to

sell its share in one go, or to divide it into smaller shares and sell it.

2. That the bank’s share must be sold at the market price at the time of the sale, without committing to sell it at the same price as that for which it was purchased. If there is a loss and a drop in property prices, then both parties must bear that, commensurate with their shares, and it is not permissible to promise to buy the shares at the same price as when the project began, because this is guaranteeing the partner’s shares, which is not permissible.

In the Council’s statement it says:

The diminishing-share partnership is Islamically acceptable if it is done within the general guidelines on partnerships and if the following guidelines are adhered to:

a. Neither party should be committed to buying the share of the other party on the basis of the value of the shares at the time of forming the partnership, because that comes under the heading of one partner guaranteeing the share of the other partner. Rather the price of selling the shares should be decided by the market value at the time of the transaction, or on the basis of what they agreed at the time of the transaction.

b. There should be no stipulation that one party will be responsible for insurance, maintenance and other expenses; rather these expenses are to be covered by the partnership, each according to his shares

End quote.

In al-Ma‘aayeer ash-Shar‘iyyah (p. 206), it says: A diminishing-share partnership is a kind of partnership in which one of the partners promises to buy the share of the other gradually, until the purchaser becomes the sole owner of the project.

This transaction starts out by setting up the partnership, then there is buying and selling between the two partners. The partnership should have no stipulation of buying and selling; rather one partner may give a promise to that effect that is independent of the partnership deal itself. Moreover, the buying and selling must be done in a contract that is separate from the partnership

contract, and it is not permissible to stipulate either of these contracts as part of the other. End quote.

Secondly:

It is permissible for the bank to sell its share to the customer on the basis of muraabahah, on condition that this be done after the two parties have taken possession of the property, and that the muraabahah contract is free of any stipulation of riba, such as stipulating a penalty in the event of late payment of any instalment.

If these guidelines are followed, then there is nothing wrong with this transaction.

And Allah knows best