91459 - Is it permissible to rent out a mortgaged house?

the question

I belong to ARAMCO. This company offers a free-of-interest mortgage to build a house. Instalments will be automatically discounted from my salary every month for about fifteen years. The company provides the land for free.
Is it permissible for me to live in a floor and rent the other floor of the house? Knowing that it is owned by the company until mortgage is paid.
The article (9) of the agreement with the company says:
“You are not allowed to rent, sell or pledge the house under any case before the whole mortgage is paid, unless you get a written permission from the company. The company also has the right to take any suitable action it sees fit in case the contract is violated.”.

Detailed answer

Praise be to Allah.

This means that the mortgaged land is in pledge to the company until the loan is paid off. The scholars differed as to whether it is permissible for the one who is keeping something as a pledge to rent out the property in question without the permission of the one who gave it to him in pledge.

Some of them are of the view that this is not permissible. This is the view of Imam Abu Haneefah and Imam Ahmad.

Others are of the view that it is permissible to rent it out for a period that ends before the debt becomes due. This is the view of Imam Maalik and Imam al-Shaafa’i.

Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (4/254): The one who is keeping the property in pledge does not have the right to benefit from the property, by using it, dwelling in it etc, and he does not have the right to dispose of it by renting it out, lending it or otherwise,

without the permission of the one who gave him the pledge. This is the view of al-Thawri and ashaab al-ra'y. Maalik, Ibn Abi Layla, al-Shaafa'i and Ibn al-Mundhir said: The one who is keeping the pledged property has the right to rent it out or lend it for a period that ends before the debt becomes due. End quote.

Undoubtedly the purpose of a mortgage or pledge is to guarantee repayment of the debt, and the company has the right to sell the mortgaged property and take the loan from its price if the time for paying off comes and the debtor refuses to pay the debt or is unable to do so.

This guarantee is diminished if the house is rented out, because it is difficult to evict the tenant, and that may take years, in addition to the money and effort it will cost.

Hence the company has the right to stipulate that the borrower is not allowed to rent out the house, because even if this renting does not affect the rights of the company, it undoubtedly affects the guarantee of repayment of the debt, and the Prophet (peace and blessings of Allaah be upon him) said: "The Muslims are bound by their conditions, except a condition that makes a haraam thing permissible or makes a halaal thing forbidden." Narrated by al-Tirmidhi (1352) and Abu Dawood (3594); classed as saheeh by al-Albaani in Saheeh al-Tirmidhi.

If the borrower has agreed to this condition then he must abide by it.

And Allaah knows best.