98479 - If the bank sells gold by auction that it is keeping as collateral, is it permissible to buy it?

the question

I want to know about buying gold from an auction for a very cheap price, because some people leave it with the bank as collateral, and when the time [for paying their debt] comes, the bank sells it for much less than its real price. Is buying this gold permissible for me?

Detailed answer

Praise be to Allah.

It is permissible to buy gold from an auction subject to two conditions:

1. That the purchase is hand-to-hand, which includes certified cheques, which means that the money is moved from the buyer's account and is deposited in the seller's account immediately. Please see question no. 2711 .

The Islamic Fiqh Council belonging to the Muslim World League issued a statement in its eleventh session in which they said: After studying and discussing the matter, the council unanimously determined the following:

Firstly: the receipt of the [certified] cheque may be regarded as an exchange on the spot, if certain conditions are met when money is to be transferred between banks.

Secondly: recording it in the bank's records comes under the ruling on exchange on the spot for one who wants to exchange one currency for another, whether this exchange is in return for currency that a person gives to the bank, or when the money is already deposited in the bank. End quote.

2. The bank’s sale of the collateral should be permissible according to Islamic rulings. What that means is it is only permissible to sell the collateral if the time for payment of the debt has come and the debtor refuses to pay it. So if the borrower gave the lender (the bank) permission to sell the collateral, the matter is clear. If he did not give permission, the authorities or judge should force him to sell, and if he does not do that, then the authorities should sell the collateral and pay the lender what is due to him. In that case, the authorities may appoint a proxy to handle the sale, whether the proxy is the lender or someone else.

It says in *Zad al-Mustaqni‘*: When the debt becomes due and the borrower refuses to pay, if the borrower gave permission to the lender to sell (the collateral), he should sell it and pay the debt, otherwise the authorities should force him to pay up or sell the collateral. If he does not do that, the authorities should sell the collateral and pay off the debt. End quote.

If the system in that country gives permission to the bank to sell collateral when the debt becomes due and the borrower does not pay it, then this is like permission from the authorities or the judge.

But that is subject to the condition that whoever sells the collateral, whether it is the bank or someone appointed by the judge, should sell it at the regular price, not for less than that.

It says in *Mughni al-Muhtaj* (3/71): The person with whom the collateral is kept should not sell it except for the regular price in the local currency, with the exchange taking place on the spot; he is like a proxy, so he should not sell it for a lower price. If he fails to pay attention to any of these conditions, the sale is not valid, but it does not matter if the price is a little lower than the regular price, in a manner that people usually agree on through bargaining, because people usually tolerate that.

Thus you will realise that it is not permissible for the bank to sell the gold for much less than its regular price, and it is not permissible to buy it from the bank [for such a low price], because this transaction is not valid, as explained above, and because it is consuming the borrower’s wealth unlawfully.

And Allah knows best.