

OBSTACLES IN IMPLEMENTING ISLAMIC BANKING OPERATIONS FOR FINANCING OFF-PLAN SALE PROJECTS IN ALGERIA.

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Abstract:

While various commercial banks have successfully established mechanisms to finance housing projects through installment sales under Law N° 11-04, Islamic banks still to seek the most effective Sharia-compliant financial solutions that protect their interests and facilitate the process of providing property loans to real estate developers and purchasers within the installment sales framework. This research paper aims to explore various Islamic financing methods and identify the obstacles that hinder their application in financing off-plan sale projects.

Keywords: Islamic banking, real estate development, mortgage loans, Islamic financing models, off-plan sales.

INTRODUCTION:

In the context of the Algerian government's adoption of a free-market economy in the early 1990s, significant amendments affecting financial transactions were introduced. These changes led many banks to adopt real estate loan schemes for individuals seeking ownership, whether for new construction, renovation, or the purchase of land suitable for development. These loans were also extended to real estate development institutions to finance their projects, with interest being charged by the banks. However, a considerable segment of society rejected these interest-based loans due to their reliance on *riba* (usury), which is prohibited under Islamic law.

In response, Islamic banks emerged as an alternative, offering interest-free real estate loans. The Algerian legislator has regulated Islamic banking operations through Regulation⁽¹⁾ N° 20-02, which defines Islamic banking transactions as those that do not involve the payment or receipt of interest. This regulatory framework allowed commercial banks to establish Islamic banking windows aimed at providing Sharia-compliant real estate loans⁽²⁾, thus broadening the availability of Islamic financing beyond traditional Islamic banks.

While both commercial and Islamic banks offer mortgage loans for the purchase of existing properties—whether residential units or land suitable for construction—they also finance construction completion projects for private individuals or real estate developers using various financing models. However, financing the purchase of a property that does not yet exist at the time of contracting presents unique challenges. This complexity arises because the buyer is acquiring a property—usually a residential apartment—that will only be completed in the future by the real estate developer. This arrangement, known as an off-plan sale (or sale of designs), is a modern legal framework introduced by the Algerian legislator to involve buyers in the financing of

¹-Regulation N° 20-02 dated 15/03/2020, which defines banking operations related to Islamic banking and the rules of its practice by banks and financial institutions, Algerian official journal N° 16, dated 24/03/2020.

²-Many banks, if not most of the banks that have the approval to practice banking activities in Algeria, have resorted to opening windows at the level of their headquarters specialized in granting loans in accordance with Islamic law, in response to the desire of many of the customers of these banks. In a question I asked personally to the Director of the Savings and Reserve Bank of the Wilayat of Batna about the mechanism of opening these windows, and the validity of their transactions away from the suspicion of usurious interests, the Director assured me that these windows are financially independent from the original bank, and their capital is completely separate from the bank's capital. Even the employees who were entrusted with the task of managing these windows do not practice any other activity related to the original bank. He confirmed that this procedure was based on the fatwas of religious scholars specialized in Islamic economics.

- Statement of Mr. Farouk Bloom, Deputy Regional Manager of the Savings and Reserve Fund - Batna Bank, working session at the bank's headquarters on 01/03/2020.



residential projects. While commercial banks have adapted their financing mechanisms to accommodate off-plan sales, Islamic banks remain hesitant about which financing methods are appropriate for such transactions.

This research paper seeks to examine the role of Islamic banks in financing housing projects through mortgages within the framework of off-plan sales. Specifically, the study aims to answer the following problematic: To what extent can Islamic banking models be applied by Islamic banks to finance purchases under off-plan sale contracts?

To address this problematic, the paper will explore several sub-questions:

- What are the various Islamic banking models, and what distinguishes them from each other?
- What obstacles exist in applying these models to off-plan sales?
- Which of these models can be effectively applied to finance the purchase of housing that will be completed in the future under an off-plan sale contract?

This study employs an integrated scientific approach, utilizing the descriptive method to examine Islamic banking as a legal phenomenon regulated by laws, decrees, and instructions. Additionally, the analytical method is used to interpret various legal texts that govern Islamic banking operations.

The research is organized into two main parts. The first part provides a theoretical introduction to the intervention mechanisms of Islamic banks in real estate investment. The second part examines the different Islamic banking models used in real estate financing and assesses their suitability for financing real estate promotion projects within the framework of off-plan sales.

1: The Role of Islamic Banks in Real Estate Investment.

Islamic banks, as financial institutions, provide real estate loans through Islamic finance methods, which are grounded in a well-established jurisprudential principle that "profit is earned in Sharia either through ownership or effort". This principle is based on by three sub-principles: ownership, tangibility, and the requirement that the financing process must involve goods and services⁽³⁾.

In this section, we will explore the concept of Islamic banks' involvement in real estate investment and then identify the various sources of financing available to these institutions.

1.1: Concept of Islamic Finance: Islamic finance refers to financial activities conducted in accordance with the principles of Islamic Sharia. This approach is employed by Islamic banks as well as by many commercial banks in Algeria that have established Islamic banking windows.

To thoroughly understand Islamic finance, we will first examine its legal definition, followed by its jurisprudential definition.

1.1.1: Legal Definition of Islamic Banks: The legal definition of Islamic banks is articulated in the first paragraph of Article 05 of the Agreement Establishing the International Federation of Islamic Banks, which states⁽⁴⁾: "Islamic banks are those banks or institutions whose founding law and statutes explicitly stipulate adherence to the principles of Sharia and the prohibition of dealing with interest, whether for lending or borrowing."

1.1.2: Jurisprudential Definition of Islamic Banks: According to researcher Hussein Muhammad Samhan and his colleagues, "Islamic banks are financial institutions that collect and invest funds within the framework of Islamic Sharia"⁽⁵⁾, Another jurisprudential definition by researcher Aroua Fatiha describes an Islamic bank as "a financial institution that accumulates funds and invests them

³-For more informations consult, D.Kareche, "Profit Controls and Eligibility Factors in Islamic Economics and Their Relationship to Risk - An Analytical Descriptive Study," Journal of Social Sciences and Humanities, Volume 13, Issue 26, 19-46, University of Batna 1, Algeria, published on 01/06/2012, P 40.

⁴-The International Federation of Islamic Banks: It was established in 1976, after its establishment agreement was ratified by the heads of Islamic banks, and it was internationally recognized at the ninth meeting of foreign ministers of Islamic countries held in Dakar, in 1977.

-From the Islamic Banking website www.marefa.org/Islamic-Banking/simplified Browse the site on 18/01/2022.

⁵-H.M.Samhan, M.H.El-Wadi, Islamic Banks: Theoretical Foundations and Practical Applications, Fourth Edition, (Dar Al-Masirah Publishing and Distribution, Amman, Jordan, 2012), P 42.



according to Islamic Sharia, aiming to build a cooperative Islamic society, ensure equitable distribution, and direct financial activities in line with Islamic principles"⁽⁶⁾.

It is noteworthy that the legal definition is more concise and clear compared to the jurisprudential interpretations. The legal definition is based on a very important jurisprudential rule: the prohibition of dealing with interest⁽⁷⁾, either for lending or borrowing. This prohibition distinguishes Islamic banks from conventional banks. Some researchers have pointed out that the emphasis on the Islamic identity of these banks is intended to clarify the specific commitment to Sharia principles in their dealings with customers, ensuring that transactions are free from any illicit elements and providing alternatives rooted in Islamic law.

1.2: Financial Resources of Islamic Banks and Their Employment Criteria: The provision of mortgages by Islamic banks requires substantial financial resources due to the high costs associated with real estate and project completion. Moreover, Islamic banks are often the preferred choice for real estate developers and citizens seeking to avoid interest-bearing loans. This preference compels Islamic banks to diversify their financial resources to meet the needs of borrowers while establishing precise criteria for loan disbursement and ensuring adequate guarantees for the recovery of invested funds.

1.2.1: Financial Sources of Islamic Banks: The primary financial sources of Islamic banks can be categorized into internal and external sources:

- **Internal Sources:** These include three main components⁽⁸⁾:
 - **Bank Capital:** This is a fundamental requirement for obtaining accreditation when establishing the bank and can be adjusted as stipulated in Article 31 of Law N° 23-09⁽⁹⁾ on Monetary and Banking Law. It serves as a guarantee for the rights of depositors.
 - **Bank Reserves:** The Algerian legislator allows both commercial and Islamic banks to allocate reserve funds for the purpose of increasing their capital⁽¹⁰⁾.
 - **Retained Earnings:** The Board of Directors of an Islamic bank may choose to retain a portion of the bank's profits instead of distributing them to shareholders, using these retained earnings to expand the bank's operations.
- **External Sources:** These include:
 - **Demand Deposits:** These are cash deposits made by customers, which can be withdrawn at any time. Due to their liquidity, banks typically do not rely heavily on demand deposits for long-term investment planning.
 - **Investment Deposits:** These deposits are made for a fixed term and cannot be withdrawn until the term expires, allowing the bank to use these funds for short-term or long-term investments⁽¹¹⁾.
 - **Savings Deposits:** These accounts are accessible to the general public, particularly middle-income individuals who wish to save a portion of their income in an Islamic bank savings account.

1.2.2: Criteria for the Investment of Funds in Islamic Banks: Funds acquired by Islamic banks through both internal and external sources are invested according to specific criteria related to the

⁶-F.Aroua, Mechanisms of Investing Funds in Islamic Banks, Master of Laws Memorandum, Business Law Branch, 2007/2008, University of Algiers, Algeria, P 8.

⁷-L.Boumaraf, Therole of the interveners in financing the projects of the promotional housing supported in the Algerian legislation, thesis submitted to obtain a doctorate third stage (LMD) in law, specialization of real estate law, 2022/2023, University of Batna 1, Algeria, P 205.

⁸-M.Bouacha, "Banking Risk Management, Journal of Humanities", Volume 18, Issue 1, 227-245, University of Montoury Constantine, Algeria, published on 30/06/2007, P 228.

⁹-Law N° 23-09 dated 21/06/2023, containing the Monetary and Banking Law, Algerian official journal N° 43, dated 27/06/2023. Revokes Order 03-11 relating to Cash and Loan, amended and supplemented.

¹⁰-See the provisions of Article 31 of Law N° 23-09 containing the Monetary and Banking Law.

¹¹-F.Aroua, op cit, P 15.



bank itself, the client seeking financing, and the project in which the funds will be invested. These criteria are outlined as follows⁽¹²⁾:

Islamic banks are required to engage with clients in accordance with the principles of Islamic Sharia, which means that their investment practices differ from those of conventional economic banks. Before investing in any project, even if it appears profitable, Islamic banks must ensure that the activity is legitimate, permissible, and does not conflict with the objectives of Islamic law. Priority is given to projects that contribute to job creation and help address unemployment issues⁽¹³⁾.

2: Application of Islamic Banking Products to Finance Off-Plan Sale Projects.

It is well-known that commercial banks often provide real estate loans in exchange for varying interest rates, avoiding investments in partnership with real estate developers. This is a key distinction between commercial and Islamic banks. Islamic banks, by contrast, offer a variety of Sharia-compliant financial products as outlined in Article 4 of Regulation N° 20-02, including Murabaha, Musharaka, Mudaraba, Ijara, Salam, Istisna'a, and deposit accounts. These products are designed to facilitate partnerships with clients in the real estate sector.

While these financial products are suitable for properties that exist at the time of investment, applying these formulas to off-plan sales (i.e., properties that do not yet exist at the time of contracting) presents challenges and may raise concerns about compliance with Islamic law, as discussed in the following sections.

2.1: Murabaha Sale Formula: The Murabaha sale formula has gained significant popularity among Islamic banks, particularly in the financing of consumer and commercial vehicles. However, the question arises whether this formula can be applied to finance off-plan sale projects. This section explores this possibility.

2.1.1: Definition of Murabaha Sale Formula: Murabaha is a Sharia-compliant sales method wherein the bank sells a product after purchasing it, adding a profit margin to the purchase price. Jurisprudentially, this is considered a legitimate sale. Legally, as per Article 5 of Law N° 20-02, Murabaha is defined as a contract in which a bank or financial institution sells a known commodity, whether movable or immovable, that it owns, at the acquisition cost plus a predetermined profit margin. The payment terms are agreed upon by both parties.

The Murabaha sale formula used by Islamic banks is characterized by the following:

- The commodity, whether movable or immovable, must be known and owned by the bank or financial institution as the first buyer. The client seeking financing is the second buyer⁽¹⁴⁾.
- The initial purchase price must be disclosed to the second buyer (the client).
- The profit margin must be known, either as a fixed amount or as a percentage of the commodity's cost.

2.1.2: Applicability of Murabaha in Financing Off-Plan Sale Projects: Article 5 of Regulation N° 20-02 specifies that the Murabaha formula applies to both movable goods and real estate. However, an off-plan sale contract involves the sale of a property that does not yet exist at the time of contracting but is expected to exist in the future. For Murabaha to be applicable in such cases, the bank must first acquire the property from the developer, as it is the initial buyer before selling it to the second buyer (the client) ⁽¹⁵⁾. The challenge arises because the property does not exist at the

¹²-F.Aroua, op cit, P 17.

¹³-A.Ben Hassen, Bank Deposits – Their Types Used by Their Investment, 1st Edition, (Dar Ibn Hazm, Lebanon, 1999), P 91.

¹⁴-A.C.ELMalgui, Islamic Banks: The Experience between Jurisprudence, Law and Application, First Edition, (Arab Cultural Center, Casablanca, Morocco, 2000), P 440.

¹⁵-The contract of sale on designs: It is a contract transferring the rights of the land and what is accomplished on it from the building as soon as its month, and transferring the ownership of what is accomplished whenever the construction works progress automatically. The real estate promoter is allowed to contract with the acquirer according to a special form to sell it a building or part of a building scheduled to be built or in the construction phase, through which the real estate promoter is obligated to complete the completion at the agreed time in accordance with the technical characteristics mentioned in the contract. In return, the acquirer



time of contracting, and its price is not fixed, as stipulated in Article 38 of Law N° 11-04. Consequently, it is impossible to agree on a known profit margin at the time of the Murabaha contract, making it difficult to apply the Murabaha formula within the framework of off-plan sales.

2.2: Financing through Musharaka and Mudaraba: Musharaka (partnership) and Mudaraba (speculation) are financing methods that share similarities in principle. This section examines their definitions, characteristics, and the potential for their application in off-plan sale projects.

2.2.1: Definition of Musharaka and Mudaraba: Musharaka is a widely practiced and straightforward financing method. A customer lacking sufficient financial liquidity to purchase a residential property or complete a real estate development project may⁽¹⁶⁾, instead of seeking a loan with predetermined interest from a conventional bank, approach an Islamic bank with a proposal for a partnership. If the Islamic bank agrees, it assumes the risk of loss but is entitled to a share of the profit anticipated from the partnership⁽¹⁷⁾. This method is regulated under Article 6 of Regulation N° 20-02, which outlines how banks and financial institutions contribute to financing through partnership⁽¹⁸⁾.

In cases where the bank fully finances the project, the partnership becomes a Mudaraba arrangement, defined by Algerian law as a contract in which a bank or financial institution, referred to as the "money lender," provides the necessary capital to the contractor who invests it in a profit-generating project⁽¹⁹⁾.

Characteristics of Musharaka and Mudaraba include:

- The feasibility study for the project is prepared by the partner, not the bank. The partner determines the project's cost, expected revenues, and the desired partnership duration.
- Partnerships are typically temporary, concluding after a set period, at which point the partner (borrower) assumes full ownership of the project⁽²⁰⁾.
- If the bank approves the partnership, the customer contributes their share, and the bank provides the remaining capital. In a Mudaraba arrangement, the bank provides all the capital, which is held in a bank account designated for the project at the same bank.
- The partner is responsible for the agreed-upon investment, and profits or losses are shared annually according to the proportions stipulated in the financing contract.
- The bank gradually withdraws from the partnership, with the partner purchasing the bank's share over time⁽²¹⁾, ultimately becoming the sole owner of the project by the end of the agreed financing period.

2.2.2: Applicability of Musharaka and Mudaraba in Off-Plan Sales: Given the characteristics of Musharaka and Mudaraba contracts, these forms are generally unsuitable for the purchase of property under off-plan sales. The primary objective of off-plan sales is property ownership, not profit generation, which contrasts with the bank's goal in a partnership or Mudaraba arrangement. However, a real estate developer, as a profit-oriented entrepreneur, could theoretically enter into a Musharaka or Mudaraba arrangement, even in the context of off-plan sales.

Nonetheless, Article 36 of Real Estate Promotion Law N° 11-04 prohibits developers from entering into off-plan sale contracts if they have resorted to borrowing, as the mortgage encumbers the entire project, preventing the transfer of ownership to the purchaser. The off-plan sale contract is

is obligated to pay the legally prescribed installments in accordance with the schedule of progress of construction works, in order to contribute to financing the completion process.

-For more informations consult, L.Boumaraf, op cit, P120.

¹⁶- M.R.Djeldjal, " Islamic Finance System for Medium and Small Enterprises, Journal of Comparative Legal Studies", Volume 7, Issue 1, 117-134, University of Chlef, Algeria, published on 28/06/2021.

¹⁷-A.C.ELMalgui, op cit, P 362.

¹⁸-In the provisions of Article 6 of Law 20-02, it is stated that: "Participation is a contract between a bank or a financial institution and one or several parties, with the aim of participating in the capital of an institution, in a project or in commercial operations in order to achieve profits."

¹⁹-See the provisions of Article 7 of Regulation N° 20-02, mentioned above.

²⁰- A.C.ELMalgui, op cit, P 376.

²¹-M.R.Djeldjal, op cit, P 125.



registered similarly to a standard sale contract. If, however, the bank does not mortgage the real estate asset and instead uses other guarantees by entering as a partner in the company's capital, the partnership model could be used to finance the project⁽²²⁾. Additionally, if the developer employs a right preservation contract to market the properties, they could use Musharaka or Mudaraba for financing, as these forms are well-suited for developers.

2.3: Ijara Financing: Ijara, often referred to as leasing with a promise of ownership, is one of the most prominent and widely utilized forms of Islamic banking.

2.3.1: Definition of the Ijara Formula: Ijara is defined by the Algerian legislator in Article 8 of Regulation N° 20-02, which governs banking operations related to Islamic finance. It is a crucial instrument for real estate financing under Sharia law, offering an interest-free method of property acquisition⁽²³⁾. Ijara is a contractual agreement between the Islamic bank (the lessor) and the customer (the lessee), wherein the customer leases a property owned by the bank, benefiting from its use for a specified period, with an eventual transfer of ownership⁽²⁴⁾.

The characteristics of this financing formula include:

- The customer selects the real estate property they wish to acquire through the lease agreement.
- The property in question must be free from legal restrictions and eligible for public registration.
- Upon reviewing and approving the customer's request, the bank purchases the specified property.
- Once the bank owns the property, it leases it to the customer, who then becomes the tenant and has the right to use and benefit from the property⁽²⁵⁾.
- The bank retains ownership of the asset throughout the lease term, while the customer is considered the holder and user until all lease installments are paid.
- Upon the completion of the lease term and fulfillment of all contractual obligations, ownership of the leased property is transferred to the customer, either through a gift deed (endowment contract) or a sale contract at the market price prevailing at the time⁽²⁶⁾.

2.3.2: Applicability of the Ijara Formula with a Promise of Ownership in Off-Plan Sales: It is evident from the above discussion that the Ijara financing model with a promise of ownership, as practiced by Islamic banks, closely resembles the lease-to-own model used in the "AADL" (Agence Nationale de l'Amélioration et du Développement du Logement) projects. These projects involve the sale of residential units that do not yet exist at the time of contracting, based on a lease-sale contract preceded by a reservation certificate.

This approach, however, contradicts the provisions of Law N° 11-04⁽²⁷⁾, which governs real estate development activities. Specifically, Article 25 of the law stipulates that off-plan sales must be conducted through either a sale on designs⁽²⁸⁾ contract (vente en l'état futur d'achèvement, VEFA)

²²-The Algerian legislator organized the contract of reservation of the right for the first time in Law N° 86-07 related to real estate promotion, and then canceled it by virtue of Legislative Decree N° 93-.03 related to real estate activity, and it was again regulated by virtue of the valid Law N° 11-04 related to the rules governing the publication of real estate promotion.

-Benassi St., Real Estate Promotion Contract – Right Preservation Contract – Sale Contract on Designs, (Dar El Khaldounia, Algeria, 2019), P 66.

²³-A.A.Kechkar, M.T.Al-Othmani, Introduction to Islamic Finance, First Edition, (Al-Rowad Publishing House, Damascus, Syria, 2019), P 115.

²⁴-A.M.Lotfi, Ijarah Financing Ended by Ownership, 1st Edition, (Dar Al-Fikr and Law, Mansoura, Egypt, 2017), P 24.

²⁵-M.R.Djeldjal, op cit, P 126.

²⁶- A.M.Lotfi, op cit, P-P 44-47.

²⁷-Law N° 11-04 dated 17/02/2011, which specifies the rules governing the activity of real estate promotion, Algerian official journal N° 14, dated 06/03/2011.

²⁸-See Article 28 of Law N° 11-04, which defines the rules governing real estate promotion activity.



or a right preservation contract⁽²⁹⁾, as authorized under Executive Decree N° 13-431⁽³⁰⁾, The AADL Agency's practice of marketing non-existent properties without adhering to these legal contract forms constitutes a direct violation of Article 35 of Law N° 11-04. Moreover, the agency's collection of installments from customers, despite the prohibition on such practices before a contract is signed between the developer and the buyer, further exacerbates this legal infringement.

In conclusion, the lease-to-own model is only legally valid if the leased property exists at the time of contracting. Therefore, the Ijara formula with a promise of ownership, as used by Islamic banks, cannot be applied to finance off-plan sale projects. This includes both the financing of construction by contracting with the developer and the financing of the lease followed by ownership for the customer, due to the non-existence of the residential units at the time of contracting.

2.4: Salam Sale Formula: There are instances where a buyer is compelled to purchase a commodity that does not exist at the time of contracting, requiring advance payment to secure the commodity and ensure its delivery at the agreed-upon time. Is this type of transaction legally permissible? This section explores the legality of such sales and examines its applicability to real estate transactions under sale-on-design contracts.

2.4.1: Definition of the Salam Sale Formula: The Salam sale is defined legislatively by the Algerian legislator in Article 9 of Regulation N° 20-02. It is described as a contract in which the bank or financial institution, acting as the buyer, purchases a commodity that will be delivered at a later date by the seller (the customer) in exchange for immediate cash payment. In essence, a Salam sale involves the purchase of a specified commodity at an accelerated price, with the understanding that the goods in question do not exist at the time of contracting and are treated as a debt held by the seller⁽³¹⁾.

Jurisprudential studies further clarify that the Salam sale is a transaction where the seller commits to providing a specific commodity at a predetermined future date. This type of sale is commonly used in the context of agricultural products but can also be extended to real estate investments⁽³²⁾.

2.4.2: Applicability of the Salam Sale Formula to Sale-on-Design Contracts: When applying the principles of a Salam contract to a sale-on-design contract, it is evident that a real estate developer could sell in-progress housing based on a set of conditions outlined in a feasibility study prepared for the bank. This approach allows the developer to secure financial liquidity through the Salam contract, where payment is made in advance, and delivery is postponed until the completion of the project.

However, implementing this formula could undermine the primary role of the real estate developer as the entity responsible for marketing the properties. The financial liquidity obtained through the Salam contract essentially transforms the transaction into a direct sale, where the bank becomes the new owner of the project's products, such as apartments and shops. The bank would then market these properties independently, possibly with the help of an intermediary. This arrangement conflicts with the fundamental principle that the real estate developer is the sole party authorized by law to market properties before their completion under a sale-on-design contract⁽³³⁾.

2.5: Istisna'a Financing: Istisna'a is a relatively lesser-known financing formula, despite its significance. Its importance and application are elaborated in the following points.

2.5.1: Definition of Istisna'a: The Algerian legislator provides a legal definition of the Istisna'a formula in Article 10 of Regulation N° 20-02. According to this article, Istisna'a is a contract under which a bank or financial institution commits to delivering a commodity to a customer who is the

²⁹-See Article 27 of Law N° 11-04, previously mentioned.

³⁰-Executive Decree N° 13-431 dated 18/12/2013, which specifies the two models of the contract of reservation of right and the contract of sale on designs for real estate properties, as well as the limits of payment of the price of the property subject of the contract of sale on designs and the amount of the penalty of delay and its terms and methods of payment, Algerian official journal N° 66, dated 25/12/2013.

³¹-L.Boumaraf, op cit P 212.

³²-A.A.Kechkar, M. T.Al-Othmani, op cit, P 128.

³³-See Article 29 of Law N° 11-04, previously mentioned.



order owner. The bank may either produce the commodity itself or arrange for its manufacture according to specific characteristics agreed upon by both parties, at a predetermined price, and with payment terms established in advance.

The key characteristics of the Istisna'a formula include:

- **Custom Manufacturing:** The bank or financial institution fulfills the customer's request for a specific commodity that does not exist at the time of the request. This applies to sale-on-design contracts, where the property does not exist at the time of contracting, and the acquirer receives it upon completion by the real estate developer. The acquirer is obligated to pay the price in installments that correspond to the progress of the construction work.
- **Specification-Based Production:** The commodity under the Istisna'a contract must be manufactured according to certain specifications provided by the customer⁽³⁴⁾. This also applies to sale-on-design contracts, where the real estate developer is required to prepare a technical dossier for the project, including a detailed descriptive table of the specifications of the units to be completed and marketed under the sale-on-design contract, which encompasses all relevant information.
- **Pre-Determined Price:** The sale price in an Istisna'a contract must be predetermined. Similarly, in sale-on-design contracts, the price is agreed upon and known in advance. However, according to Article 38 of Law N° 11-04, this price is not fixed and may be subject to modification within a 20% range.

2.5.2: Applicability of the Istisna'a Formula in Financing Sales Based on Designs: Given that the apartment the acquirer seeks to purchase is a commodity with known specifications, a known price, and is to be completed by the real estate developer, Islamic banks can feasibly use the Istisna'a formula to finance the construction of residential buildings in accordance with the sale-on-design framework. In fact, jurists consider Istisna'a to be an optimal contract for financing sale-on-design projects as it aligns with the principles of Islamic Sharia.

Resolution N° 6/1/52 issued by the Islamic Fiqh Academy of the Organization of the Islamic Conference at its sixth conference in Jeddah, Saudi Arabia, in 1990, affirmed that Istisna'a is a legally permissible⁽³⁵⁾ form of contract for selling buildings yet to be constructed, provided it adheres to legitimate methods and is financed with halal money⁽³⁶⁾. Thus, in terms of application, there is a significant alignment between the Istisna'a contract as an Islamic banking instrument and the sale-on-design contract as a mechanism for real estate development⁽³⁷⁾.

To validate an Istisna'a contract, it is required that the subject of the transaction conforms to the type and specifications outlined by the customer, that the manufacturing tools are provided by the manufacturer, and that there is no strict time limit. Otherwise, the Istisna'a contract may be transformed into a Salam contract⁽³⁸⁾.

CONCLUSION:

Real estate loans offered by banks are among the most effective and accessible methods of financing. These loans enable acquirers to obtain property ownership and encourage real estate developers to invest in the field of real estate promotion. However, mortgages provided by commercial banks, whether through concessional or regular loans, are often regarded as usurious

³⁴-S.Boufassa, Financing investments by borrowing and its repercussions on economic and social development - Comparative study, PhD thesis in economic sciences, and management sciences, specialization of economic sciences, 2007/2008, University of Algiers, Algeria. P 146.

³⁵-L.Boumaraf, op cit, P 211.

³⁶-M.S.Khelifa, The provisions of the contract for the sale of construction on the map, (Dar Al-Nahda Al-Arabiya, Egypt, 2015), P 15.

³⁷-R.Faghrou, "The Position of Islamic Jurisprudence on the Contract for the Sale of Property on Designs in Algerian Legislation", Journal of Scientific Research and Islamic Studies, Volume 11, Issue 5, 164-207, Ben Youssef Ben Khedda University, Algeria, published on 30/12/2019, P 201.

³⁸- M.N.M.Lebda, Mortgage and its Role in the Occurrence of the Global Financial Crisis - A Comparative Economic Jurisprudence Study, (Dar Al-Fikr Al-Jami, Alexandria, Egypt, 2018), P 323.



by jurists, leading many citizens to avoid them. This prompted the state to intervene by regulating Islamic loans under Regulation N° 20-02, which defines banking operations related to Islamic banking.

This study focused on the applicability of Islamic banking operations in financing sales contracts based on designs. The following conclusions were reached:

- The sale of goods or properties that do not exist at the time of contracting is one of the most challenging types of sales, particularly in terms of financing. While the Algerian legislator has approved such transactions under Article 92 of the Civil Code and regulated them under Law N° 11-04 concerning the rules governing real estate promotion, as well as Executive Decree N° 13-431, which includes models for sale-on-design contracts and reservation contracts.
- Within the framework of sale-on-design projects, the legislator has allowed real estate developers to use real estate loans in the context of a reservation contract and has permitted acquirers to resort to real estate loans for sale-on-design contracts. However, the Usury-interest imposed by commercial banks have driven both acquirers and developers to seek financing from Islamic banks.
- Islamic banks and financial institutions offering Islamic banking windows have introduced various financing formulas that comply with Islamic law, including Murabaha, Musharaka, Mudaraba, Ijarah, Salam, and Istisna'a. However, Murabaha, Mudaraba, Ijarah, and Salam are not well-suited for financing real estate transactions within the context of sale-on-design projects. In contrast, the Musharaka and Istisna'a formulas are significant options that can be applied to projects under construction, which align with sale-on-design transactions.

Despite the availability of diverse Islamic banking operations, these do not directly address the financing of sale-on-design projects, especially state-supported projects. For instance, the National Housing Fund requires the National Housing Bank to have a sale-on-design contract in the name of the acquirer, who is the actual beneficiary, in order to provide subsidies and continue financing the project. This requirement conflicts with the policies of Islamic banks, which require ownership in participation contracts, Istisna'a contracts, or Murabaha agreements, making it challenging to finance state-subsidized housing projects marketed through sale-on-design mechanisms.

Based on these findings, the following recommendations are suggested:

- A mechanism should be developed to involve Islamic banks and Islamic banking windows within commercial banks in financing real estate promotion projects, particularly state-supported sale-on-design projects, including subsidized upgraded housing.
- Islamic banks should relax the conditions imposed on customers (borrowers) seeking real estate loans through Islamic banking formulas, especially for sale-on-design projects.
- Islamic banks should reconsider the profit margins imposed in Islamic banking transactions to attract more customers, as the profit margins in various Islamic banking forms are significantly higher compared to the interest rates charged by commercial banks.
- The state should intervene to support Islamic loans by adopting a subsidized loan structure, similar to the support provided for usurious loans granted by commercial banks, whether for real estate developers⁽³⁹⁾ or buyers⁽⁴⁰⁾.

³⁹-Executive Decree N° 10-167 dated 30/06/2010, related to the modalities of determining the rate of interest rate reduction on loans granted to real estate agents contributing to the achievement of public housing programs and the modalities of granting them, Algerian official journal N° 41 dated 04/07/2010.

⁴⁰-Executive Decree N° 13-389 dated 24/11/2013, which determines the levels and modalities of granting a reduction in the interest rate on loans granted by banks and financial institutions for the acquisition of collective housing and the construction of rural housing as well as individual housing to be completed in the form of a complex in specific areas in the states of the South and the Upper Hills, Algerian official journal N° 61 dated 08/12/2013.



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