

Artículo de investigación

Comparative study of pre-sale contract with emphasis on Islamic jurisprudence

Estudio comparativo del contrato de preventa con énfasis en la jurisprudencia islámica

Estudo comparativo de contrato de pré-venda com ênfase na jurisprudência islâmica

Recibido: 20 de abril de 2018. Aceptado: 10 de mayo de 2018

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Abstract

With the advancement and industrialization of human societies, emerging contracts such as contracts for the sale of buildings with their own conditions and works, along with issues of ambiguity, have attracted the attention of lawyers. In this type of contract, the vendor pledges to build and deliver the building against a certain amount of money that is levied in installment from the pre-buyer, in accordance with the terms of the contract and within the specified deadline. The nature of the contract in Islamic jurisprudence has not been discussed in isolation. However, it can be said that in terms of Islamic law, the proper legal form for expressing the nature of the contract is the form of "dispossessed extinction", which has material and material conditions and, in the absence of formal and material conditions, has a guarantee of execution. In this article, the nature of the contract for the pre-sale of the building is examined from the point of view of Islamic law and refers to the rights of one of the western countries.

Keywords: contract, commitment to work, contract for building, prepayment.

Resumen

Con el avance y la industrialización de las sociedades humanas, los contratos emergentes, como los contratos para la venta de edificios con sus propias condiciones y trabajos, junto con cuestiones de ambigüedad, han atraído la atención de los abogados. En este tipo de contrato, el vendedor se compromete a construir y entregar el edificio contra una cierta cantidad de dinero que se cobra en cuotas del pre-comprador, de acuerdo con los términos del contrato y dentro del plazo especificado. La naturaleza del contrato en la jurisprudencia islámica no se ha tratado de forma aislada. Sin embargo, se puede decir que en términos de la ley islámica, la forma legal adecuada para expresar la naturaleza del contrato es la forma de "extinción desposeída", que tiene condiciones materiales y materiales y, en ausencia de condiciones formales y materiales, Tiene garantía de ejecución. En este artículo, la naturaleza del contrato para la preventa del edificio se examina desde el punto de vista de la ley islámica y se refiere a los derechos de uno de los países occidentales.

Palabras claves: contrato, compromiso de trabajo, contrato de construcción, prepago.

Resumo

Com o avanço e a industrialização das sociedades humanas, contratos emergentes como contratos para a venda de prédios com condições e obras próprias, juntamente com questões de ambigüidade, atraíram a atenção de advogados. Neste tipo de contrato, o fornecedor se compromete a construir e entregar o edifício contra uma certa quantia de dinheiro que é cobrada em parcelas do pré-comprador, de acordo com os termos do contrato e dentro do prazo especificado. A natureza do contrato na jurisprudência islâmica não foi discutida isoladamente. No entanto, pode-se dizer que, em termos da lei islâmica, a forma legal adequada para expressar a natureza do contrato é a forma de "extinção extinta", que tem condições

materiais e materiais e, na ausência de condições formais e materiais, tem garantia de execução. Neste artigo, a natureza do contrato para a pré-venda do edifício é examinada do ponto de vista da lei islâmica e se refere aos direitos de um dos países ocidentais.

Palavras-chave: contrato, compromisso de trabalhar, contrato de construção, pré-pagamento.

Introduction

Today, contracts for the sale of apartments have become widespread and have led to controversy among lawyers. The legal nature of such contracts, as well as its conditions and effects, gives rise to ambiguities. It seems that due to differences of opinion about the nature of the contract, and consequently on the conditions and effects of the contract, the research area in this field is open. In fact, in this type of contract, the seller does not sell the inventory, but pledges to build a building and deliver it on time to what he receives from the customer in installments.

Given that pre-sales contracts for buildings have been formed due to the contemporary human needs of society today, it can be considered as a new contract which has not been discussed separately in jurisprudence, and in some jurisprudential books, similar references are mentioned. Has been as the jurists do not recognize the "divine mortal", they exclude one thing, and it is "extinct as a consequence". An example is the sale of tea on the plant, to be added to the other five other countries that will be created in the future (Ienrudi and Jafar, 1978), there are also other issues regarding the dispensation. For example, the sale of fruit before its appearance and its appearance was forbidden for one year or less, in which there is a consensus among the jurists. The jurists consider the cause of this as a disadvantage in the transaction. But according to the jurists' consensus, it can be said that after fruitfulness, it is allowed to eat fruit for one year or less (Sani and Banalibanahmad, 2005).

As we know, the transaction in the contract is the same, and the condition of the correctness of the order in the same type is that the seller is present at the moment of the contract, and if the item is not the transaction, the transaction is void. The reason for the failure is that the transaction does not meet one of the essential conditions of the offer (that is, the condition of the actual availability of a certain amount at the time of the contract). Therefore, if a marriage contract is suspended on the side of a party or a

supporter, then it should not be considered a true suspension.

In the case of the contract for the sale of the apartment, it should be noted that in the contract, the contractor concludes that there is a space in which there is a container for creating a great deal in the outside world, and the builder is solely committed to building an apartment on a land that, after construction, is part of a large Becomes. In fact, in the contract for the sale of the apartment, at the time of the purchase of the original issue, there is a sale to the estate, which is possible and as a result of existing ownership. The existing ownership of the land and the possible extinction of the existing property as a result of the existing ownership is an apartment. This extinction of the existence of the universe should not be equated with the absolute state of extinction.

First topic: Contract for the pre-sale of the building and its conditions from the point of view of Islamic law

As previously stated, in the contract for the sale of the apartment, the location, dimensions, layout, area and other characteristics of the apartment are usually determined on the construction map as well as in the contract. That is, it determines how much the apartment is, the number and the floor. The seller also undertakes to make the apartment with the specifications specified in the contract within the specified deadline and deliver the buyer. Therefore, an apartment with a specific geographic and geographic location and profile is a financially priced one, which can not be found elsewhere, although buildings or other units may be similar. But because each location has a different price, so the apartment is a valuable asset. As described in the preceding line, the price of a property (such as an apartment) can only be sold in the same way. Because if this is not sold it will cause the transaction to be unrecognized and therefore will invalidate the transaction.

In a pre-sale, when an apartment is built and completed, the buyer acquires ownership of the apartment. As stated above, immovable property, including apartments and residential units, is different in terms of price due to differences in specifications, dimensions and location, and where they are located. In other words, none of them is similar to another, and it is therefore a precious price. But this is not a general rule, but also with some exceptions.

If the contract for the sale of the apartment is an obligation to file or promise a future deal, it will surely be the contracts in which, at the time of concluding the contract, the joint intention of the parties is the non-transfer of large-value property, and the terms of the contract are expressly, It implies an obligation to deal in the future. On this basis, any pre-sale contract can not be regarded as a promise, but an agreement which expresses the will of the parties and whether the contract is merely a commitment to transfer or transfer.

If any contract for the sale of an apartment, regardless of its provisions, is merely a vesting and obligation, the seller may, at any time, transfer to third parties after the completion of the construction of the buyer's money and the investment profits Predecessors to pocket. The buyer can only recover the money that has been used for several years. The lawyer does not like this justice and there must be a way to fix it. In this effort, one has to think too much about the goal, namely, justice, and interpret the rules in a way that goes beyond the old form and moves forward (Katouzian, 2005).

In fact, the seller, with the conclusion of the contract, transfers to him part of the field at least as much as the buyer's share, and since the arena is presently available, the bargain is not considered to be worthless. In addition, the seller is committed to the construction and delivery of the apartment in accordance with the provisions of the pre-sale contract, which, in the end, the contract for the sale of the apartment can be justified in the form of an identical contract.

However, the analysis of the contract for the sale of the apartment in the form of a commitment to the sale would be a sign of a lack of contract strength. Of course, if the contract is made in the form of an obligation to make a bid and the joint intention of the parties and the sovereignty of the will of the parties to the obligation to make a

deal, then there is no debate. But in a pre-sale contract, the apartment is set up under normal conditions between housing co-operative or a building company and a clerk on the one hand and the applicant for housing on the other. And there is no debate about the obligation to enter into a contract, limiting the legal relationships arising from this agreement to a simple obligation to be imposed is far from the real intention of the transactors and away from the realities of society. Because if he comes to the buyer in the performance of his commitment and the transfer of the apartment, he may also consider his interest in not accepting this claim, and eventually he will pay it if he has received the consideration, and from buying an apartment Which is made due to his request. In such a situation, the forerunner will inevitably demand the purchase of the apartment for his obligation to purchase the apartment, which, despite the difficulty of obtaining the transaction from the buyer, can not be offered as an easy solution.

There are a number of types of bits that are in the general sense of the subject and nature. But in terms of a number of conditions, it is different from the general one that we will deal with. Of these, one can mention the "induction contract". In fact, what is referred to in our jurisprudence under the title of "pre-sales contract" is "affiliate sales". Self-referencing is the sale of financially held and held-to-lie funds (that is, the type and qualities of it are specified). In the case of the proprietor who agrees in the House of Lords and the final delivery of the term will be determined by a specified agreement " (Sani et al, 2005).

The predecessor contract is highly similar to the pre-sale contract of the building, and some writers have considered the nature of the pre-sale contract in the form of a self-sustaining deal (Tabatabaei et al, 2014).

The jurists have referred to the predecessor as the property taken against the property of the court designated by the contract, or the purchase of total property over time, against cash (Khoyi and Abolghasem, 1992).

The jurists mention the terms on which to comply (the contract of the predecessor). Among these conditions, one can first mention the writing of the generic gender. In the case of the predecessor (the contract of the predecessor), the meaning of a great deal is a fact that many of its followers, such as wheat and barley (Sani and Banalibanahmad, 2005) and the second condition of the expression of commodity characteristics, are described here.

This is to describe the ignorance of that kind of product is similar to other similar goods and plays the main role in determining the price. The third condition is the receipt of money during the term of the contract of the predecessor. The money must be fully received in the Parliament and, if it is conditional on the salary being paid, a portion of the money will be in the form of a donation, the money received will be canceled and the money will be canceled. Because it is in the promise of part of the money to become futile, and it is not certain how much of the money is in front of the money and the amount in front of the currency of the tufts (Sani and Banalibanahmad, 2005). The fourth condition is that the commodity and, if necessary, the money is determined by the modulus or weight or number. The fifth condition is that the time needed to deliver the goods is exactly determined. Finally, the sixth condition will be that the goods are "found abundantly" at the time of arrival of the delivery time (Sani and Banalibanahmad, 2005).

The financial definition that has been defined in the "Personalized Personal" jurisprudence is also something that has existed in the outside world. The general property that has been designated can be sold either jointly or non-cooperatively. In a co-operative state and in the event of the loss of a certain amount of property, in proportion to the amount of money lost from the total property, the buyer will share the loss in proportion to its share of the purchase. However, in non-cooperative mode, it does not have an effect on the amount of the buyer's share of the total, and the same amount should be given to the buyer as long as it remains at the amount purchased from the total.

An agreement that at first sight may seem to be a precondition for a building contract is a sales contract ordered. In the definition of the contract, they said: "The purpose of ordering a contract for sale on order or a contract of construction is that someone goes to the craftsman and ask him to make some of the goods he makes to build for him. However, a contract between them will be created, which the owner of the industry must make and agree on the price for it." (Mueemanqemi and Mohammad 1997).

The contract for the manufacture of goods in the past was limited to certain things such as shoes, boots, containers, hats, etc., but now it has many things to do, such as making cars, making parts,

carpets and so on. Contracts with large factories are closed and the order for the construction of goods is given to them. This is the basis of many deals, as has been the case in the 1980 Vienna Convention on the Sale of Goods (James and Law, 2002).

There is a question about the nature of the sales contract, whether the sales contract is of an independent nature, or is one of the contracts, such as the sale or lease of persons, on condition that the product is sold? In response, it can be said that although the appearance of the words of some jurists indicates that the contract for the construction of a contract is a specific type of contract, the fact is that the order of construction only expresses the characteristic of this category of trade is rational, but that all the cases are leased or leased by individuals. The condition for the sale of the product is not considered, but some of its types are considered to be ineligible, and some of them are considered as independent contracts, and some may also be the lease contract of individuals.

For example, the situation where the parties, after the necessary negotiations, conclude an agreement according to which the manufacturer sells some of the goods made to a certain price and there is no expectation between the parties for the manufacture of the goods, this type of order The construction of goods is considered to be a product because the nature of the supply is the purchase of a good by the buyer and the buyer's acceptance, which is also realized here.

The other is when the parties make an unconditional promise with each other. So the customer says, "Make this a lot of the goods, maybe I'll buy it from you", and the constructor either accepts it, or the builder says, "After a month, come to me, maybe this number I will make a commodity for you and give it to me to buy from me." It is clear, then, that whenever a verdict is not closed, an uncertain promise is not considered to be a bargain or a contract. But this promise is another type of contract of construction contract.

The third mode is the same as the second one, with the difference that in this case the promises that the parties bring together are completely definitive and the owner of the industry undertakes to make the number of agreed items and sell them for sale, and the buyer, after the delivery of it from the seller Buy So each one decides to do something else. They are not

betting on their contracts, but they are considered as contractual arrangements. Therefore, a contract for sale to order can not be recognized independently of a contract, but based on the various forms that it entails, it can be in the form of various contracts, such as the sale or lease of persons.

Also, the guarantee of the performance of all terms of the contract of sale of the apartment is subject to the general rules of contracts.

Second topic: Pre-sale contract and its effects in terms of English law

Contracts for building a building in English law have a number of individuals and as a result of a network of contractual relationships. The person who builds the building and then sells it. is a builder who owns or owns the entire land, and when the building is completed, it is owned and usually also called a customer or employer. In a building contract, the contractual relationship between the builder and the one who owns the building upon completion is known as the original contract. The pre-order in English law is that the owner, who is the primary owner of the land, first transfers the ownership of the land to the buyer. In this case, the buyer owns the land, but his ownership of the building is delayed until the construction is complete. The nature of such contracts, namely, contracts for the construction of buildings or the installation of objects on or on the land in such a way as to make it a permanent building on the land, as well as on the condition that, until the attachment is transferred to the property and therefore the property is not transferred, A contract of labor and materials and not a sale contract. In fact, where the subject matter of the contract is made and then sold, and the subject of the contract is in a semi-completed or unfinished state, including labor contracts and items such as building contracts, property ownership, when materials are attached to the land or installed Or subject to logical rationale. Contracts relating to the construction of buildings and the installation of materials on the ground are contracts of labor and materials and are different from sales contracts. In British law, ownership is not a conditional condition, and only that the builder is in contracts for the sale, construction, construction and commissioning of buildings is sufficient. The other terms of this type of contract in English law are as follows:

No money can be paid to him until the seller delivers his work in accordance with the contract

specifications and does not actually complete it. The right to obtain instructions and transaction information from the pre-buyer.

Also, the pre-emption obligations in English law are as follows: The pre-emption obligations under the explicit terms of the sample contracts are based on explicit conditions in the sample contracts with three obligations to the materials and goods, the design and design of the construction plan.

1. "Article 1-1.8." All goods and goods must be prepared in the same manner as described in the contract, and technically acceptable to the extent that they are standard.
2. "Article 1.8.1." The procedure shall be in accordance with the standards specified in the contract, and, if there is no standard in the contract, the standards shall be in accordance with the standards of work appropriate.
3. This sample contract for building design and construction also requires a prior written notice to be given to the architect if the pre-dealer has a discrepancy between the design of the contract and the map drawn up by the architect.

In the general law and in the law on the provision of goods and services approved in 1982. The implied terms are as follows:

1. Make the builder work well and masterfully
2. That residential homes should be constructed that are suitable for human habitation;
3. All materials provided by the manufacturer must be of good quality and suitable for any purpose that they are intended to apply.

The implied terms in the Supply of Goods and Services Act are as follows:

1. Implied Assignment: The Transmitter, in accordance with Clause (1) 2, has the right to transfer the property with this implied commitment that the property is free of charge and not subject to mortgage.
2. Implied Obligation on Description: The transferred property in accordance with Clause (2) 3 of the Contract shall

be consistent with and equivalent to that described in the Contract.

3. Implied commitment to quality: According to Article 3 (4), the goods transported must be of good quality.

Also, other obligations of the seller: the obligation to build and complete the apartment in accordance with the specifications mentioned in the contract is based on the construction plan.

Also, the pre-paid rights are as follows:

1. Right to terminate the contract and receive damages if the building is not in accordance with the terms of the contract.
2. The right to receive damages in case of failure of the foundation of the property before the date of conclusion of the contract.
3. The right to receive the apartment in due time.

The buyer's obligations are as follows:

1. Give the Thames Contract.
2. Provide instructions and information to the presenter at the usual time.
3. If the land belongs to the pre-buyer and the pre-seller has the right to seize it, he intends to build, the pre-buyer must place the land at the usual time at the disposal of the pre-dealer.
4. Perform all actions required by the pre-buyer to execute the contract.

Result:

From the above, the following results are obtained:

1. From the views of jurists in Islam, the principle of acceptance in pre-sale contracts can be derived. Therefore, it should be said that, when the Imams' Jurisprudence in the deal of the five Chinese tea on the tea plant attached to the five China's other extinct tea that has not yet been established, they believe it to be correct, and surely it should be true that the apartment is still not hard to live and consequently Accepted land. Therefore, it seems that the contract for the sale of the apartment can be justified in the form of

a "divorce as a consequence of the existing".

2. With regard to the nature of pre-sale contracts, it is possible to implement pre-contract contracts by contract and also with custom contracts in Islamic law. The contract for the sale of the apartment, despite the fact that there is no time at the time of conclusion of the contract, can be considered the same.
3. As to how the terms of the contract for the sale of the apartment can be replied, the contract for the sale of the apartment, in terms of the basic conditions both in Islamic law and in English law, has effects on the pre-order, the pre-installer and the third party, which is stated in its place.

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