

What Is The Ruling On Selling And Buying A Vehicle If The Price Is Not Fixed On Advanced Booking ?

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Question

What do the Scholars of Islam and Muftis of Shari'ah say regarding the matter of going to the dealer of a company to book a new car. Some companies have an option in their agreement that if you pay the full price of the car at the time of booking, the price of your car is locked. That is, even if the price of the car goes up in the market, you will still get the car at the same price, but if you do not pay the full price, the price of the car will not be locked, that is, if the price of the car goes up in the market, you will have to pay according to the market price at the time of delivery. The question is, what is it like for a dealer to make such a condition in the agreement that if the price of the car goes up, then the buyer will have to pay the price accordingly?

Note: The detail of the company's process from car booking to delivery is: first the company announces the manufacturing of a new car and introduces its design and features, etc. People see this and then they go to different dealers of the company and start booking cars. This booking continues for a certain period, after which it is closed. The required amount for booking is fixed by the company and it varies according to the prices of the cars i.e. if the price of the car is low, then at least Rs. 500,000 has to be deposited for its booking and if the price is higher, then Rs.1,000,000. The remaining amount should be deposited one month before the car's delivery. The one, who wants to book a car, deposits the booking amount in the company's account through a bank, not in the dealer's. Once the money reaches the company, it starts manufacturing cars. The company does not invest its own capital in manufacturing the cars for selling them later, because the price of a car is also in millions, so the company never takes the risk of investing so much on its own but the purpose of starting the cars booking in advance is that the company can do business with people's money.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

Islam is a complete religion which guides us in every sphere of life. Trade is a very big sphere of human life. In this regard too, Islamic principles have been set and the command to carry out business in accordance with these principles has been given by Allah Almighty and His Beloved Prophet صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ. If guidance is sought from authentic Scholars and Muftis before getting involved in buying and selling, one can avoid possible irregularities. Allah Almighty orders in the Holy Quran to act after taking guidance from the learned Scholars:

فَسْئَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ ﴿١٦٤﴾

So, o people! Ask the people of knowledge if you do not know.

The Holy Prophet صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ warned against the agreement based on contradictions to Islamic principles and he said:

"ما بال رجال يشترطون شروطاً ليست في كتاب الله، ما كان من شرط ليس في كتاب الله فهو باطل، وإن كان مائة شرط، فقضاء الله الحق وشرط الله اوثق"

Translation: What has happened to the people that they make such conditions that are not in Allah's Book, the condition which is not in Allah's Book is invalid, even if there are a hundred conditions; the decision of Allah Almighty is true, and the condition permitted by Allah Almighty is strong. (*Sahih Bukhari, vol. 1, p. 290, Karachi*)

And as far as the question is concerned, remember that at the time of the car's booking, the condition made by the dealer that "if there is an increase in the price of the car in the market, the customer will be obliged to pay the same increased price" is impermissible, Haraam and a sin. For this reason, this agreement will stand *Fasid* and it will be binding for the parties (i.e., those who entered into this agreement) to terminate it.

The details of this ruling are as follows: the Shar'i status of booking a car for buying is a contract of *Istisna*. *Istisna* means to get something prepared on order and here too when the customer goes to the dealer of a company and books the car, he has this purpose behind it that the company manufactures the car within such and such duration and ships it to the dealer and it is then delivered to the customer. Therefore, in this scenario, this contract falls under the subject of *Istisna*. *Istisna* is a regular buying and selling process; and one of the basic principles for validating the buying and selling process is to fix the price of the selling goods as well. If a deal is done, but such uncertainty and ambiguity exist in the price which will later lead to an argument, then the agreement becomes *Fasid* and impermissible. Those who make such an agreement are sinners. Along with repentance, it is also *Wajib* (obligatory) for them to terminate the agreement.

Now, in the case questioned about, although the customer is informed about the current price of the car for the time being but when it is decided that "the customer will have to pay according to the market price at the time of delivery.", this leads to uncertainty in the price because it is not known how much the price will increase by the time of the delivery hence this agreement will be Haraam and a sin because the price has not been fixed.

It is mentioned in *Fatawa-e-Hindiyah*:

"الاستصناع جائز في كل ما جرى التعامل فيه، كالقطنسوة والخف والوانى المتخذة من الصفر والنحاس وما اشبه ذلك استحساناً، كذا في المحيط، ثم ان جاز الاستصناع فيما للناس فيه تعامل اذا بين وصفا على وجه يحصل التعريف، اما فيما لا تعامل فيه - لم يجوز، كذا في الجامع الصغير وصورته: ان يقول للخفاف: اصنع لي خفا من اديك يوافق رجلى ويديه رجله بكذا او يقول للصائغ صغ لي خاتما من فضتك وبين وزنه وصفته بكذا"

Translation: The contract of *Istisna* is permissible based on *Istihsan* in everything for which common practice is found, such as caps, socks, brass and copper utensils and such. The same is mentioned in “Muheet”.

Also, *Istisna* is only permissible for the article being in common practice when their attributes are described in such a way which enables one to gain knowledge and recognition of the article. However, *Istisna* is impermissible for those articles for which common practice is not found. The same is mentioned in “*Jam’i Sagheer*”. The case of *Istisna* is such as a person shows his feet to the sock maker and asks him to make a sock according to his feet of the leather he (the sock maker) has, or tells the goldsmith to make a ring for him of his silver and informs about its weight and attributes. (*Fatawa Hindiyyah, vol. 3, p. 207*)

According to the correct statement, *Istisna* is the buying and selling process as per the rule. It is mentioned in *Tanveer Al-Absaar with Durr Al-Mukhtar*:

"صح الاستصناع بيعا، لاعدة على الصحيح"

Translation: According to the correct view, *Istisna* is valid as a transaction, not as a promise. (*Tanveer-al-Absaar with Durr Al-Mukhtar, vol. 7, p. 502*)

And the uncertainty in price in buying and selling prevents the transaction from being permissible. It is mentioned in *Fatawa Hindiyyah*:

جهالة المبيع او الثمن مانعة جواز البيع اذا كان يتعذر معها التسليم

Translation: The uncertainty in an item sold or the price is a barrier to the permissibility of the transaction, while due to this, giving in possession is impossible. (*Fatawa Hindiyyah, vol. 3, p. 122*)

And Sadr-ush-Shari’ah, Mufti Amjad Ali A’zami رَحْمَةُ اللهِ عَلَيْهِ mentions a condition out of the conditions which render the transaction valid: the item sold and the price should be loud and clear that there remains no chance of an argument. If they are indefinite leading to a dispute, then the transaction is not valid. For example: One goat has been sold from this herd or this thing has been sold at a reasonable price or the price of the thing sold will be told by so-and-so person. (*Bahar-e-Shari’at, vol. 2, p. 617*)

It is also important to fix a price in an *Istisna* transaction in particular. A’la Hadrat رَحْمَةُ اللهِ عَلَيْهِ has stated: Having someone produce something in such a way that they make it on their own at a such-and-such price, is called *Istisna*. If the norm of making such a thing this way prevails and its type, quality, status, scale, price, etc., have become so clear that no uncertainty will lead to a dispute in the future, then this contract is permissible according to Shari’ah. (*Fatawa Razawiyah, vol. 17, pp. 597-598*)

He رَحْمَةُ اللهِ عَلَيْهِ further mentions in detail at one place regarding ambiguity in price in *Istisna*, “According to research, *Istisna* is however a transaction.”

"كبا نض عليه في البتون وصحه المحققون من الشراح ففي النقاية: الاستصناع باجل سلم تعاملوا فيه او لا وبلا اجل فيما يتعامل فيه"

بيع والمبيع العين لا العبل اة، ومثله في الاصلاح والملتقى والتنوير وغيرها وفي الهداية: الصحيح انه يجوز بيعا لاعدة والبعد و مرقد يعتبر

موجودا حكما وبعقود عليه العين دون العبل هو الصحيح اذ ملخصا ونحوه في الايضاح والدور وغيرهما من الاسفار الغرودا وضحنا بقام
مع ازالة الاوهام بتوفيق الملك العلامة فيما علقنا على رد المحتار "

Translation: As it has been clarified in *Mutoon* and has been authenticated by the Research Interpreters; it is mentioned in *Nuqaya*: if the duration is fixed in *Istisna* then it is *Salam* (سلم), regardless of the norms of the people. And if it is according to the prevailing norm without fixing duration, then it is a transaction and the item sold is the core factor, not the action. And the same is mentioned in *Islah, Multaqa* and *Tanveer*, etc. And it is mentioned in *Hidayah*: According to precise opinion It is permissible as a transaction, not as a promise; and a non-existent thing is sometimes considered to exist legally and the thing for which the contract is made is the main factor, not the work; this opinion is precise.

And a transaction can never stand such uncertainty in price that so-and-so price will be for the such-and-such duration and so-and-so price will be for the such-and-such duration.

"في الخلاصة: رجل باع شيئا على انه بالنقد بكذا وبالنسيئة بكذا او الى شهر بكذا او الى شهرين بكذا، لم يجز"

Translation: It is mentioned in *Khulasa*, if a person sells something in such a way that its cash price is this and its credit price is that or it will cost this much within a period of one month and that much within a period of two months, then it is not permissible.

So in *Istisna*, even if there is not a month or more when there's uncertainty, the contract will be *Fasid* and it will be *Wajib* (obligatory) to terminate it. (*Fatawa Razawiyyah*, vol. 17, pp. 599-600)

The book "Shar'a Standards" which has a special significance in the Muslim world, compiled by the Bahraini organization AAOIFI, mentions about the *Istisna* contract:

"عقد الاستصناع ملزم للطرفين اذا توافرت فيه شروطه وهي: بيان جنس الشيء المستصنع ونوعه وقدره واوصافه المطلوبة

ومعلومية الثمن وتحديد الاجل ان وجد "

Translation: *Istisna* is an obligatory contract for the parties, while it contains the conditions of the *Istisna*, and those are as follows: to state the category, type, quantity and required attributes of the product being manufactured, to know the price and, to determine a period, if there is any. (*Shari'a Standards, Shari'a Standard # 11, p. 298*)

It is further stated in the conditions of the permissibility of *Istisna*:

"ان يكون ثمن الاستصناع معلوما هونفى الجهالة والغرر البفضيين الى المنازعة"

Translation: One of the conditions for *Istisna* to be permissible is that the price of *Istisna* should be known and that is the removal of the uncertainty (in price) and deception leading to conflict. (*Shari'a Standards, Shari'a Standard #11, p. 314*)

The parties entering into an impermissible agreement are sinners so it is necessary for them to end it. It is mentioned in *Al-Aqood Ad-Durriya Fi Tanqeeh Fatawa Al-Hamidiya*:

"ويجب على كل واحد منهما اى من البائع والمشتري فسخه قبل القبض او بعدة ما دام في يد المشتري اعدا مال الفساد، لانه

معصية، فيجب رفعها"

Translation: For both the seller and the buyer, before and after the possession of an item sold as long as the item sold is existent, it is necessary to end the *Fasid* transaction so that the

conflict ends because it is a sin to make an impermissible contract. Therefore, ending it is Wajib (obligatory). (*Al-'Aqood Al-Durriyyah fi Tanqeeh Fatawa Al-Hamidiyyah, vol. 2, p. 120*)

The booking period for cars is usually more than one month, despite it has been called *Istisna*; the reason behind it is that in the case of fixing a period of more than one month in *Istisna*, even though according to Imam-e-A'zam رَحْمَةُ اللَّهِ عَلَيْهِ it is a Salam (سلم) transaction, and it is necessary to meet all the conditions of a Salam (سلم) transaction, since according to Sahibayn عَلَيْهِمَا الرَّحْمَةُ, it still remains an *Istisna* transaction, and the leading Scholars of our time have issued a Fatwa on the opinion of Sahibayn عَلَيْهِمَا الرَّحْمَةُ, such as the Shari'ah Council of India Bareilly in its sixth jurisprudential seminar, issued a Fatwa on the view of Sahibayn عَلَيْهِمَا الرَّحْمَةُ to avoid حرج شديد. Similarly, Majlis-e-Shari'ah Jami'ah Ashrafiyyah Mubarakpur has also issued a Fatwa on the opinion of Sahibayn عَلَيْهِمَا الرَّحْمَةُ because of حاجت شرعية and تعامل in the transaction of apartments. Therefore, according to Sahibayn's Mufta bihi opinion (the view in which fatwaa is given on), if a period of one month or more is fixed in the booking of cars, even then the transaction will remain *Istisna*.

It is stated in the decisions of the Shari'ah Council: According to the jurisprudential view of Imam-e-A'zam رَضِيَ اللَّهُ عَنْهُ, which is adopted and on the basis of which the Fatwa has been issued, there can be no *Istisna* in the transaction when the period of one month or more is mentioned in the transaction. But the jurisprudential view of Sahibayn رَحْمَةُ اللَّهِ عَلَيْهِمَا is that in the case of تعامل, *Istisna* is permissible mentioning the period as well, and the mention of the period will be based on quickness. For udool (not opting for) the jurisprudential view of Imam-e-A'zam رَضِيَ اللَّهُ عَنْهُ exists, and it is also known that in many cities this method of buying and selling is being practised by the people. In such circumstances according to Sahibayn رَحْمَةُ اللَّهِ عَلَيْهِمَا, *Istisna* is permissible despite the period being one month or more, and the sayings of Sahibayn رَحْمَةُ اللَّهِ عَلَيْهِمَا also carry weight, so keeping this case in the premises of *Istisna*, based on the sayings of Sahibayn رَحْمَةُ اللَّهِ عَلَيْهِمَا the verdict of its permissibility is hereby given. (*Majlis Shar'i kay fayslay, vol. 1, pp. 238-239*)

وَاللَّهُ أَعْلَمُ عَزَّوَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

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 **Dar-ul-Ifta Ahlesunnat (Dawat-e-Islami)**

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