

## 21. IJARAH WA IQTINA (LEASING AND PROMISE TO GIFT)

In the Shariah, it is allowed that instead of sale, the lessor signs a separate promise to gift the leased asset to the lessee at the end of the lease period, subject to his payment of all amounts of rent. This arrangement is called Ijarah wa Iqtina. It has been allowed by a large number of contemporary scholars and is widely acted upon by Islamic banks and financial institutions. The validity of this arrangement is subject to two basic conditions:

- a) The agreement of Ijarah itself should not be subject to signing this promise of sale or gift but the promise should be recorded in a separate document.
- b) The promise should be unilateral and binding on the promisor only. It should not be a bilateral promise binding on both parties because in this case it will be a full contract effected to a future date, which is not allowed in the case of sale or gift.

### **Sub Lease**

If the leased asset is used differently by different users, the lessee cannot sub lease the leased asset except with the express permission of the lessor. If the lessor permits the lessee to sub lease, he may sub lease it. If the rent claimed from the sub-lessee is equal to or less than the rent payable to the owner / original lessor, all the recognized schools of Islamic jurisprudence are unanimous on the permissibility of the sub lease. However, the opinions are different in case the rent charged from the sub-lessee is higher than the rent payable to the owner. Imam Shafi'i and some other scholars allow it and hold that the sub lessor may enjoy the surplus received from the sub-lessee. This is the preferred view in the Hanbali school as well. On the other hand, the Hanafi school is of the view that the surplus received from the sub-lessee in this case is not permissible for the sub-lessor to keep and he will have to give that surplus in charity. However, if the sub-lessor has developed the leased property by adding something to it or has rented it in a currency different from the currency in which he himself pays rent to the owner / the original lessor, he can claim a higher rent from his sub-lessee and can enjoy the surplus.

Although the view of Imam Abu Hanifah is more precautious which should be acted upon to the best possible extent, in cases of need the view of Shafi'i and Hanbali schools may be followed because there is no express prohibition in the Quran or in the Sunnah against the surplus claimed from the lessee. Ibn Qudamah has argued the permissibility of surplus.

### **Assigning of the Lease**

The lessor can sell the leased property to a third party whereby the relation of lessor and lessee will be established between the new owner and the lessee. However, the assigning of the lease itself (without assigning the ownership in the leased asset) for a monetary consideration is not permissible.

The difference between the two situations is that in the latter case the ownership of the asset is not transferred to the assignee, but he becomes entitled to receive the rent of the asset only. This kind of assignment is allowed in the Shariah only where no monetary consideration is charged from the assignee for this assignment. For example, a lessor can assign his right to claim rent from the lessee to his son, or to his friend in the form of a gift. Similarly, he can assign this right to any one of his creditors to set off his debt out of the rentals received by him. But if the lessor wants to sell this right for a fixed price, it is not permissible, because in this case the money (the amount of rentals) is sold for money, which is a transaction subject to the principle of equality. Otherwise it will be tantamount to a Riba transaction, hence prohibited.