

Concerning earnest money in selling

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

Question: Our Sheikh –may Allaah give you the perfect reward – what is the ruling regarding the selling that contains earnest money? And may Allaah reward you well.

Answer: All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers until the Day of Resurrection.

The form of earnest money selling is that: a man purchases a merchandise where he pays the seller an amount of money at that place –declaring thereby his intention in purchasing it– in a way that if they accomplish the transaction the paid money will be included in the price of the merchandise, that is to say: it represents a portion of its full price, and if the transaction is not accomplished, the buyer leaves that money for the seller and does not ask for it. This having been said, scholars have differed on the permissibility of this deal in two opinions:

- **The first opinion:** says that selling with earnest money is impermissible, and likewise said the majority of scholars, and it is the opinion of Al-Imaam Maalik and Ash-Shaafi'ee and the People of Opinion (Hanafee School of jurisprudence) and Aboo Al-Khattaab from the Hanbalee School, and this is also narrated from Ibn 'Abbaas رضي الله عنهم and Al-Hassan¹ رحمه الله, and they took as an evidence for its impermissibility the hadeeth of 'Amr Ibn Shu'ayb, on the authority of his father, that his grandfather said: "The Messenger of Allaah—صلى الله عليه وسلم— forbade the type of transactions in which earnest money was paid"², and this hadeeth was reported from several chains of narration strengthening one another. In this hadeeth there is a clear indication that earnest money is prohibited, and the reason of forbidding it is that: it contains hazard and an erroneous stipulation and devouring people's wealth unjustly,

¹ See: Al-Muntaqaa by Al-Baadjee (4/157), Bidaayat Al-Mujtahid by Ibn Rushd (2/162), Al-Mughnee by Ibn Qudaama (4/256), Mughnee Al-Muhtaj by Ash-Sharbeenee (2/39), Ash-Sharh Al-Kabeer by Ad-Dardeer (3/63), Nayl-Al-Awtaar by Ash-Shawkaanee (6/288).

² Reported by Aboo Dawood (3502), and Ibn Maajah (2192), communicated through Maalik. This hadeeth is Da'eef (weak) because the man whom Maalik narrated it from is unknown, yet Al-Baihaqee said in As-Sunan Al-Kubraa (5/559): "It is also narrated by Habeeb Ibn Abee Habeeb from Maalik, he said: 'Abdullaah Ibn 'Aamir Al-Aslamee told me...and it is said: nay, but Maalik brought it from Ibn Lahee'a...and Habeeb Ibn Abee Habeeb is Da'eef (weak), and 'Abdullaah Ibn 'Aamir and Ibn Lahee'a cannot not be taken as an argument, and originally this hadeeth is an incompletely transmitted hadeeth of Maalik (its chain ends with Maalik)." And Al-Albaanee judged it Da'eef (weak) in Al-Mishkaat (2/866) (2864).

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because the buyer does not take anything in exchange for what he paid, and thereby the seller would take what he does not deserve, that is to say: the stipulation that what he paid him would be for free if he chose to leave the merchandise is an erroneous stipulation. And because the hadeeth of 'Amr Ibn Shu'ab implies restriction, which has the preponderance over the permissibility, as settled in the principles [of Jurisprudence]³.

- **The second opinion:** says that earnest money selling is permissible, and likewise said Ahmad and Ibn Seereene and Sa'eed Ibn Al-Musayyib —رحمهم الله—, and it is narrated from 'Umar Ibn Al-Khattaab and his son—رضي الله عنهما—.

What appears to me is that earnest money selling is permissible for the following evidences:

- The weakness of 'Amr Ibn Shu'ayb's hadeeth, for it is judged Da'eef (weak) by Ahmad⁴ and others⁵, and a weak hadeeth cannot be taken as an argument.
- Basically, trades and all types of earning and benefits are allowed and permissible, and this basis should not be refrained from unless by providing an evidence of prohibition, and this evidence of prohibition —as aforementioned— has a false chain of narrators and we cannot not depend upon it in rulings.
- It is the opinion of the Companions, since: "Naafi' Ibn 'Abd Al-Haarith bought a house for imprisoning in Makkah from Safwaan Ibn Umayyah provided that if 'Umar accepts then it will be for him, and if he refuses, then Safwaan will have a four-hundred dinars,"⁶ and they all are Companions—رضي الله عنهم—, and it was also allowed by Ibn 'Umar⁷—رضي الله عنهما—.
- Earnest money Selling includes a pledge of compensating the seller for suspending him and causing him to wait, which might cause him to miss other deals because of

³ See: [Nayl Al-Awtaar by Ash-Shawkaanee \(6/289\)](#).

⁴ See: [Al-Mughnee by Ibn Qudaama \(4/257\)](#).

⁵ This hadeeth is judged Da'eef (weak). See: (footnote 2).

⁶ Reported by Al-Bukhaaree without mentioning its chain of narration (5/75), Ibn Hajar said in Fath Al-Baaree (5/76): "It is reported by 'Abd Ar-Razzaaq (9213) and Ibn Abee Shayba (23201), and Al-Baihaqee (11180) through different chains of narration from 'Amr Ibn Deenaar from Abdurrahman Ibn Ferrookh."

Abdurrazzaaq added: "So 'Umar took it," and Zakariaa' Ghulaam Qadeer Al-Paakistaanee judged it Saheeh (authentic) in [Maa Sahha Min Aathaar As-Sahaabah Fi Al-fiqh \(2/895\)](#).

⁷ See: [Al-Majmoo' by An-Nawawee \(9/335\)](#).

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this one, which is the same as causing a divorced woman to miss the chances of marriage before the consummation, for she deserves the half of the dowry if he had set a dowry for her, or enjoyment (a sum of money) if he had not set for her anything, as a compensation for her suspension and causing her to miss the chance of marriage.

This being so said, whereas—in my opinion—the permissibility of earnest money has the preponderance, yet it would be better if the seller returns the money if the buyer refrains from buying, out of benevolent moral comportment, which would strengthen the brotherhood in faith, taking into account the hadeeth of the Prophet—صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ—: "**May Allaah's mercy be upon him who is lenient in his buying, in his selling, and in asking his money back.**"⁸

The perfect knowledge belongs to Allaah عَزَّ وَجَلَّ; and our last prayer is all the praises and thanks are to Allaah, the Lord of the Worlds, and prayers of Allaah are to Muhammad and his Family, Companions and Brothers until the Day of Resurrection.

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⁸ Reported by Al-Bukhaaree (2076) from the hadeeth of Jaabir Ibn 'Abdillaah—رضي الله عنهما—.