

European Council for Fatwa and Research

Resolutions and Fatwas

Second Collection

"TAKING UP A MORTGAGE TO BUY
A HOUSE"

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Fatwa (26)

Purchasing houses with an usurious loan for Muslims living in non-Muslim countries, i.e. taking up a mortgage to buy a house

The Council discussed in detail several papers concerning the purchasing of mortgaged houses and came to the following conclusion:

- The Council stresses what had been agreed upon by the Muslim *Umma* that usury is forbidden. It is a major sin and is one of the seven gravest ones. Those who commit it are considered as being waging war against Allah (swt) and His Prophet (ppbuh). In this vein, the Council supports what has been decided by *Fiqh* Councils throughout the Muslim World that bank interests are usury.
- The Council, therefore, invites the Muslim community to do its utmost to seek Islamic alternatives such as *Murabaha* (sale at a profit), which is practiced by Islamic Banks. They should avoid doubtful matters to the furthest extent possible. It encourages them to establish their own construction companies that can build houses and sell them to Muslims with relaxed, less strict lawful ways of payments.
- The Council calls upon Islamic organisations throughout Europe to enter into negotiations with European banks to find formulas that are acceptable to the Muslim buyer. Formulas like *Bei Al-Taqsit*, (sale for deferred payment), where the buyer is required to pay more money due to the fact that payment is not immediate. This formula will help both banks as well as the Muslim community. This formula is in operation in some European banks. In addition to this, some European banks opened branches in some Muslim countries, where transactions are run according to the *Shari'a* as in Bahrain. In this regard, the Council would send appeals to European banks to observe the needs of the Muslim community .

If all the above suggestions are un-available, the Council, in the light of evidence and juristic considerations, see no harm in buying mortgaged houses if the following restrictions are strictly observed:

- a) The house to be bought must be for the buyer and his household.
- b) The buyer must not have another house .

- c) The buyer must not have any surplus of assets that can help him buy a house by means other than mortgage.

This Fatwa is based on the following two major juristic considerations:

First: The agreed upon Juristic Rule which states that extreme necessities turn unlawful matters lawful. This Rule is derived from five Quranic texts, amongst them: “*He (Allah) has explained to you in detail what is forbidden to you, except under compulsion or necessity*” (6:119), and “*But whosoever is forced by necessity without willful disobedience, nor transgressing due limits; (for him) certainly, your Lord is oft-Forgiving, most merciful*” (6:145).

Moreover, Jurists have established that *Hajah*, i.e. need or necessity, whether for an individual or a group, can be treated in equal terms like *Darurah*, i.e. extreme necessity. *Hajah* or need is defined as those things which put the Muslim in a difficulty, if not fulfilled, even if he or she can do without. *Darurah* or extreme necessity, on the other hand, is that which the Muslim cannot manage without. Allah (swt) has lifted difficulty as stated in Sura Al-Hajj and Al-Ma'idah: “*And He has not laid upon you in religion any hardship*” (22:78), and “*Allah does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful*” (5:6).

The house that can satisfy the criteria set up by the definitions of *Hajah* i.e. need and *Darurah* i.e. extreme necessity above is the one that is suitable for the Muslim family in terms of size, location, locality and amenities.

But as the fatwa is built on the Rule of *Darurah* i.e. extreme necessity or *hajah*, i.e. the need (which is treated in a similar manner like *Darurah*), the Council stresses that there is another Rule which governs and complements the rule of extreme necessity and need. This rule reads what has been made permissible due to extreme necessity must be dealt with great care and taken in measure. It should be restricted to those who are in real need for a house. However, the fatwa does not cover taking up mortgage to buy a house for commercial reasons or for purposes other than buying an own house for those who do not have one.

Undoubtedly, accommodation is necessary for individuals as well as families. Allah (swt) has granted His favours upon His servants and showed them His bounties,

amongst these is their houses: "*And Allah has made for you in your home an abode*" (16:80). The Prophet (ppbuh) has explained that a spacious house is one element of three or four elements that constitute the concept of happiness. Rented houses do not fulfill all that the Muslim normally needs. They do not give him the sense of security, as he or she keeps paying towards rent for long periods of time. The tenant might be asked to evacuate their rented accommodation for reasons like size of the family, or the number of guests whom visit. When getting older or have his or her benefit suspended they might even be thrown out of the house. Buying one's own house discharges Muslims from all these discomforts and helps them settle closer to mosques, Islamic centres or schools as it helps them build up their smaller Muslim community within host countries where families get to know each other and work to establish their cultural identity .

Buying an own house also helps the Muslim family to modify it to accommodate their social and religious needs. Besides all these individual benefits, it helps the Muslim community, being a minority, to free themselves from the financial pressure that renting accommodation often causes, and focus their attention to the call to Islam and help the host community wherever possible and permissible. This cannot in fact be possible if the Muslim family works all the time just to pay towards the costs of their rented accommodations as well as their living costs .

Second: The juristic verdict which claims that it is permissible for Muslims to trade with usury and other invalid contracts in countries other than Islamic countries. This opinion is held by a number of renowned scholars such Abu-Hanifah, his colleague Muhammad Al-Shaybani, Sufayn Al-Thawri, Ibrahim Al-Nakha'i, and according to one opinion of Ahmad Ibn Hanbal which was declared as true by Ibn Taymiah, according to some Hanbalite sources. It is also the declared opinion of the Hanafi school of jurisprudence. What makes this last criterion accommodate our fatwa is a number of considerations, amongst which are the following:

- 1) According to Sharia, Muslims are not obliged to establish the civil, financial and political status of Shari'a in non-Muslim countries, as these lie beyond their capabilities. Allah (swt) does not require people to do things that are beyond their capacity.
- 2) Prohibiting usury is a matter that concerns the host non-Muslim countries, and which Muslim communities can do nothing about. It has many things to do

with the socio-economic philosophies of the host countries. However, in these countries what is required of the Muslim is to establish the Shari'a rulings in matters that concerns him in person such as the rules that govern acts of worship, food, drink and clothes, marriage, divorce, inheritance and so on. If Muslims choose not to deal with these invalid contracts, including contracts involving usury in non-Muslim countries, this would weaken them financially. Islam is, however, supposed to strengthen Muslims not weaken them, increase rather than diminish them, benefit and not to harm them. Some Salafi scholars claimed that Muslims could inherit non-Muslims as this goes in line with the hadith which says: "*Islam increases and does not decrease*"⁴³, i.e. increases Muslims in power, wealth, etc. Similar in content is the other hadith which states: "*Islam is superior and none can excel it*"⁴⁴. Therefore, if Muslims are not to trade with these invalid contracts and transactions (where extreme necessity and urgent need is involved), then they will end up paying what is required from them (in transactions that involve usury) without receiving any benefit in return. They will be losers as they will be obliged to honour these transactions, and in return they will get nothing. This way Muslims will be financially deprived and suppressed. Islam never punishes Muslims for their Islam nor abandons them in countries other than their own Muslim countries. Islam never means to let unbelievers abuse Muslims financially or otherwise, at a time where it prohibits them from getting any benefit in return.

Concerning the claim that the Hanafi Madhab allows usury in cases where the Muslim is the recipient, i.e. the beneficiary, and that the Madhab permits invalid contracts only if two conditions are satisfied :

⁴³ Abu Dawood narrated (No.2912) as did Al-Bayhaqi, through the same channel (6/205, 254-255) from Abdullah ibn Burayda, "That two brothers; a Jew and Muslim, fell into a conflict and asked Yehia ibn Ma'een to arbitrate between them, whom went on to award the Muslim the inheritance. He, i.e. Yehia, said: Abul Aswad informed me that a man told him that Mu'ath had told him: "I heard the Prophet Mohammed (ppbuh) say: "Islam increases and does not decrease", and upon this he awarded the inheritance to the Muslim. The chain of narraition to Abul Aswad is correct, however this chain is disconnected between Muath and Abul Aswad, as the narrator who made the narrated connection is unknown, however it is linked to the hadith of A'ith ibn Amr, with which it becomes a Good narration. ⁴⁴ A Good Hadith due to another. Narrated by Al-Rawyani in his 'Musnad" (No.783), Abu Nu'aym in "Akhbar Asbahan" (1/65) and Al-Bayhaqi (6/205), where two narrators are unknown. However, the previously mentioned hadith of Mu'ath ibn Jabal testifies to its authenticity, in addition to the fact that this hadith also came with a correct chain of narration that links it to Ibn Abbas, and which is relayed by Al-Tahawi in "Sharh Ma'ani Al-Athar" (3/257) and which Al-Bukhari considered as suspended (1/454) in "Kitab Al-Jana'iz" and authenticated by Ibn Hajar in "Al-Fath" (9/421). This Hadith and the one previously mentioned are both supported by the Quranic verse: "*It is He Who sent His Messenger with Guidance and the True Religion to make it prevail over all religions*" (**:33) and (**:9).

First: Where the Muslim is the beneficiary, and

Second: Where deception -involving non-Muslims- is not involved .

Arguing against this claim, first we would maintain that in our case, the benefit has not been realised. The second is the claim has not been authenticated as this has been affirmed by Muhammad Al-Shaibani; one the chief scholars of the Hanafi Madhab and a student of Abu-Hanifah, in his book “Al-Siyar Al-Kabir”. Moreover, earlier scholars of the Madhab did not set up any conditions (regarding trading with usurious contracts in non-Muslim lands). However, in our case even if the Muslim is the giver (of usury) he or she is still the beneficiary as he or she will gain an owned house after a number of years.

Furthermore, statements forwarded by Muslims living in Europe to the Council through correspondence and/or direct contacts inform that payments made towards a mortgage are equal, and sometimes lower, than those paid as mere rent mortgage. It follows that if we are to forbid usurious transactions, Muslims will be impeded from securing their own house, despite it being one of *Al-Hajat Al-Asliyyah* i.e. the essential and basic necessities, according to jurists’ terminology. Hence, Muslims will end up paying towards rents for a number of years without owning their houses, while they can own them if these payments are to be made towards mortgages .

Finally, even if this transaction is declared as invalid by the Hanafi School of jurisprudence, and those who hold a similar view, it will certainly be permitted where *Hajah* (i.e. the need that is treated by jurists on similar grounds like *Darurah*, i.e. extreme necessity, which makes impermissible things permissible) comes into consideration .

What makes our argument sound and valid is that Muslims are compelled to take usury, i.e. they do not deal with it on purpose or by their free choice. The prime criterion for forbidding usury, according to a number of Quranic verses, revolves essentially around taking usury (not giving it). However, giving usury was forbidden only to obstruct pretext, i.e. ways leading to usury, which is termed by jurists as ‘*Sad Athara’i*’. On similar grounds, notaries and witnessing usurious transactions was prohibited. They were made as such to check the means that lead to usury .

While taking usurious loan is categorically forbidden, paying interest towards a loan is permitted if there is *Hajah* i.e., an urgent need as maintained by a number of jurists. It has also been maintained that taking a usurious loan is permitted if there is no other

way available. A famous rule that we could put forward in this regard is what has been made forbidden for an essential reason within the transaction can only be made permissible for cases where *Darurah* i.e. extreme necessity, is involved, and what has been made forbidden to obstruct further ways that lead to usury can be made permissible for *Hajah*, i.e. need.

[Resolution 2/4]