

Under Scrutiny: Dubai's Grand Mufti and Consumers Criticize Islamic Financings of Off-Plan Properties

*By Hdeel Abdelhady**

Emirates 24/7 has reported that Dubai's Grand Mufti and consumers have criticized transactions involving the financing of off-plan properties by some Islamic Financial Institutions (IFIs). (See Emirates 24/7 at <http://www.emirates247.com/property/real-estate/profit-for-delayed-period-not-shariah-compliant-2011-02-20-1.358164>). According to the report, some unnamed IFIs have demanded rental or other profit payments from customers before the delivery of financed properties. One customer, quoted anonymously by Emirates 24/7, claims to have purchased a property in 2007 from a project financed by a "leading" IFI. Scheduled for delivery in 2009, the property had not yet been delivered, according to the February 20, 2011 Emirates 24/7 report. Nevertheless, the IFI demanded payment of "profit . . . for the mortgage during the delay period from 2009."

Dubai's Grand Mufti has called such demands for payment of delay period "profit" "non-Islamic" and stated that IFIs "should not charge . . . customers the rent amount or profit during the property delay period . . . If [the banks] incur losses from these projects . . . [t]he bank must take full responsibility of the delay period, not the customers."

The details of the transactions described by Emirates 24/7 are not precisely known, and therefore no attempt is made in this article to discuss the mechanics of the underlying transactions. Nevertheless, the report raises important issues that can be gleaned from its content.

As stated by the Grand Mufti, IFIs, like other parties to Islamic contracts, are required to adhere to their contractual obligations, in the absence of any legal justification excusing their performance. If, as the report suggests, the agreements between the IFIs and their customers did not authorize the IFIs to demand the payment of rent or other "profit" before property delivery, the IFIs' demands for payments would contravene contractual terms, as a matter of basic Islamic contract law.

There is also the issue of whether the allocation of risk reportedly attempted by the IFIs complies with the letter and spirit of Shari'ah. IFIs are expected to offer products and services based, with very few exceptions, on the Islamic construct of profit and loss sharing (PLS). PLS principles render IFIs more akin to partners, joint venturers, and equity investors, than to conventional lenders. Accordingly, IFIs should refrain from taking steps that effectively fix and disproportionately allocate risk to their counter-parties.

The report also raises important questions about the adequacy of the IFIs' responses to developer delays resulting from the widely felt downturn in property markets. For example, did the IFIs carefully monitor project completion progress and act proactively to mitigate the risks of delayed delivery? Did the IFIs take steps to ensure that their obligations vis-à-vis developers (and, in turn, their customers' obligations to them) were appropriately adjusted in response to market circumstances and project delays? Why did the IFIs demand consumer payment of "profit" for the delay period well after the

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property delivery date passed? One could reasonably assume that if effective transaction management and risk mitigation measures had been taken by IFIs before or early in the delay period, the pressure to shift the cost burden of delays to consumers might have been averted or reduced.

Perhaps additional details of the transactions will emerge, enabling a more detailed discussion of the transactions giving rise to the report. Details aside, the most interesting and potentially influential aspect of the story is the story itself. It is uncommon for a high ranking religious authority, like a Grand Mufti, to comment publically on pending and specific types of transactions. Almost as uncommon is the reporting by a non-specialized (*e.g.*, Islamic Finance-focused) publication on pending retail transactions. The Grand Mufti's comments and their publication for public consumption are welcome developments that promote transparency and its key components, including consumer awareness and education through the democratic dissemination of information. While the opinions expressed by the Grand Mufti are not, by themselves, technically binding on the IFIs involved in the transactions (which presumably were vetted and approved by those institutions' Shari'ah Boards), they are nevertheless powerful, and could potentially influence the conduct of IFIs.

Already the Emirates 24/7 article has generated reader comments, most of which convey consumer frustration. Hopefully the report will be a harbinger of more frequent coverage of retail Islamic finance by non-specialized news purveyors, and encourage other high ranking religious authorities, experts, consumers, and IFIs themselves to engage in public dialogue about the increasingly important subject of Islamic financial services. Stay tuned.