How to Cite:
Mehtarlou, A. A. (2022). Jurisprudential investigation of the effect of deadline for delivery in forward sale with consideration of law on presale of apartment enacted in 2010. *International Journal of Health Sciences*, *6*(S6), 4096–4110. https://doi.org/10.53730/ijhs.v6nS6.1030

Jurisprudential investigation of the effect of deadline for delivery in forward sale with consideration of law on presale of apartment enacted in 2010

Abolfazl Amani Mehtarlou
Varzeghan Branch, Islamic Azad University, Varzeghan, Iran
*Corresponding author email: abolfazleamani@gmail.com
Orcid: 0000-0002-8260-7978

***Abstract*---**Bai Salam is a contract of sale in which the object of sale is Mu'ajjal, and it is recorded, but the price is paid in cash, immediately. The deadline is considered as a pillar for contract, and if not set, the contract is terminated. the object of sale is Mu'ajjal in apartment presale contract, but it is not a pillar for the contract. The current study has investigated the effects of a deadline for delivery of the object of sale and its relevant contract. The results indicate that the presale contract is a type of Bai, and the commonality between them is that both of them are forward sales.

***Keywords*---**deadline for delivery, the object of sale, pre-sale, forward sale, contract.

Introduction

Contract of sale is one of the most important commutative contracts which is highly used in trade exchanges, and in terms of the payment at the time of contract or being Mu'ajjal, the object of sale and price have different forms in one of which if the object of sale is Mu'ajjal and the price is payable at the moment, and by installment, especially when demand for affordable housing such as apartments is very high, the apartments can be sold in two forms (*Assaggaf, H. M., 2021; Panasenko, S. V., et. al., 2021*): First, a fully constructed apartment is sold in a sales contract, and second, the apartment is not constructed yet, and it does not exist, and it sold in the form of a pre-sale. We will discuss the second form, and the obligations brought about by the object of the sale delivery period and the price. Also, one of the conditions for the object of sale is its existence at the time of contract conclusion. Is the deadline for the delivery of the object of sale and payment for price religiously legitimate? Or like the case of agricultural

Manuscript submitted: 9 March 2022, Manuscript revised: 27 May 2022, Accepted for publication: 18 June 2022

products sale, it can be forward sold, in which the object of sale will be created in the future, or the human products or ordering goods are also generic (the future products of a manufacturing line) that have a deadline and are made for the customer, are they legally or religiously legitimate? Although a similar contract of sale under the title of 'private agreement' is justifiable according to Article 10 of the Civil Code but setting a delivery deadline for a generic object of sale has various jurisprudential and legal effects in terms of examples, which are discussed and investigated in the current study.

Objectives and Methodology

The current study aimed to jurisprudentially and legally investigate the maturity of payment for the object of sale in a forward sale or apartment pre-sale with a descriptive-analytical method. And with the effects of determination or lack of determination of the object of sale in a forward sale before or after the due date, the apartments' pre-sale and solutions for it have been introduced and investigated.

Concept of Bai Salam (Forward Sale)

Salam lexically means salaam and well-being, submission, pre-sale or pre-purchase[*]. Salam is also called Salaf, but Salam is used in Saudi Arabia, and Salaf is used in Iraqi Arabic. However, Salaf is included by the Salam since it is also referred to as 'loan'[†]. Bai Salaf is synonymous with Bai Salam and is a contract of sale in which the full payment is made in advance, and the object of sale is delivered at a future time. It is shortened to Salaf. It is generally known as pre-purchase and pre-sale. In other words, the Bai Salaf is a transaction in which, unlike the credit transaction, the price is paid in cash, but a deadline is set for delivery of the object of sale. Bai Salaf is the sale of a mentioned goods by a seller in return for a specific and clear price which is paid at the same time and place of contract establishment, and the seller guarantees to deliver the object of sale to the buyer in a specified time, and this Bai has a special form[‡]. Also, Bai Salaf is the guaranteed selling of property (object of sale) in a definite maturity in return for a present price or anything that can be considered as a price. In other words, the price is paid in advance, and the object of sale is delivered at a future time. Salam purchase has a deadline while the price is paid in advance[§]. Salam, according to the definition provided by the great jurist, Ibn Idris Helli in the book "Saraer," is the sale of goods upon the seller which should be delivered in a

[*] M.M. Jazri, , *al-Nahaya fi Gharib al-Hadith va al-Athar* (Dar al-Maarefah, Beirut, 1423AH), 394-396; S. Al-Khoury Al-Shartouni, *Aqrab al-Mawardafi Masrah al-Arabiya wa Shaward* (Dar al-Asho, for printing and publishing, Iran 1374 A.H), 2 and 707; M.M. Al-Zobaydi, *Taj al-Arous min Jawahir al-Qamus* (Dar al-Qukr, Beirut, 1414 AH), 16, and 345.

[†] M. Ibn Manzoor, *Lisan Al-Arab, Dar Al-Haya Al-Tarath Al-Arabi* (Beirut 1408 AH), 6 and 331; I.H. Al-Jowhari, *Al-Sahah* (Dar Al-Kitab Al-Arabiya, Beirut, 1402 AH), 5 and 297.

[‡] Z.A.A. Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah* (Qom, Arghavan Danesh, 1426 AH), 402.

[§] S.A Khansari., *Jame'a al-madarek fi Sharh Mokhtasar al-Nafe'e* (Tehran, 1985), 3 and 316; N.H. Mohaqeq Helli, *Sharia al-Islam, one volume, first edition* (Qom 1408), 133; M.H. Najafi, *Jawahar al-Kalam, Dar al-Ehya al-Torath al-Arabiyah* (Beirut, 1981), 267.

specified maturity and a time neither brought forward nor postponed[**]. The jurists have different ideas about the Bai Salaf, but the contents are almost similar and the same. Based on the definitions provided by the jurists, Bai Salaf is the sale of a generic property that is to be delivered to the buyer in the future in return for another property (price) that, according to major jurists, should be paid to the seller at the same place of contract; otherwise, the contract is canceled.

Delivery Deadline in Bai Salam

Deferment in the Bai Salam is an element of the contract conclusion, and in case it is not set or is ambiguous, it would lead to the termination of the contract. Determination of a recorded deferment for what is to be delivered, based on a date (a specific day, month, year, or the like). If the deadline is set as the harvest time or after harvesting, or Hazira (where the dates are accumulated), the contract of sale is canceled[††]. A completely recorded deadline should be determined for the delivery of the object of sale, for example, ten days, two months, or one year, etc. If the seller says that he would deliver on the land, or at the time of harvesting, or leaf-fall, it will not be sufficient. If the seller delivers the object of sale before the determined Ajal (deadline), the customer is obliged to accept[‡‡]. According to the Civil Code, the Bai Salaf is valid even without reception of the price at the time of the contract conclusion, since Article 341 of the Civil Code allows the parties of sale to determine a deadline for delivery of the commodity or payment of the price and it has not considered any obligation for payment of the price at the time of contract conclusion when the object of sale is generic, and no deadline is set for its delivery.

The nature of apartment presale contract enacted in 2010

The pre-sale is a combined word with two words: Pre, which means ‘previous to’ and ‘before,’ and sale that is the infinitive of the verb ‘sell.’ The apartment is a French word and is defined as A part of a building that consists of several rooms and their accompanying parts. In other words, a building that consists of several units for residence or office or commercial work[§§]. Since there is no history for apartment pre-sale in jurisprudence, no jurisprudential definitions can be found for it. In the laws and regulations also, this subject is not discussed, and naturally, there are no legal definitions for apartment pre-sale contracts. Regarding the conditions and characteristics of this type of contract, it can be said apartment sale contract is a contract based on which the seller guarantees that he will construct an apartment based on an agreed map and what is described in the contract, and after its completion in a due date, and in return for a price agreed upon in a contract, delivers it to the buyer. The building pre-sale contract is very complicated in terms of the legal nature in the conventional transactions and the legal community of Iran. Therefore, before the enactment of the building pre-sale law in 2010, the judicial procedure and law doctrine each

---

[**] I. Helli, *Jame’a al-Modarresin* (1428 AH), 37.

[††] S.S.H.R. Qomi, *Minhaj Al-Saleheen (Al-Rouhani)* (1435), 11.

[‡‡] A.M. Khorasani, *Sharh Tabsarah al-Motaallemin* (Qom, 1997), 438.

[§§] M. Moin, Mohammad, *Farhang-e Farsi* (Tehran, 1981), 27; Anvari, *Bozorg Sokhan Encyclopedia* (Tehran, 2002), 41.

had different and distinguished opinions about the legal nature of this type of contract. Due to the development of urbanism and the increased migration to big cities, and subsequent population boost in these cities, the need for housing as a fundamental need has increased. Shortage of the urban spaces and optimal use of such spaces has made the tendency to the construction of apartments and living in them a fundamental solution to provide housing for this enormous population. This has taken housing construction out of the traditional model and turned it into a profession and industry, and people have become involved in this field. Simultaneous with these evolutions, the contracts for the sale of these apartments and the legal considerations derived from such constructs have emerged, among which the "apartment pre-sale contract" is one of the most important contracts.

The buyers consider it a good opportunity to buy a house because the payment is not in cash and it is in installments, and on the other hand, the constructors or sellers, through receiving a part of the price in installments, can take it as finance to begin their work. Thus, this type of contract is becoming popular in the community. In the building pre-sale contracts, the location, dimensions, technical and architectural specifications of the building, the total area of the building, and other features are mentioned in the building's map, and the seller guarantees to construct the building in a pre-agreed time frame mentioned in the contract and deliver it to the buyer[***]. In fact, in this type of contract, the seller does not sell a commodity that already exists, but he guarantees to construct a building in return for what is paid by the buyer in installment and deliver it at the due time.

Since these building pre-sale contracts have emerged based on today's social and economic needs of human beings, they can be considered novel contracts that have not been discussed independently and separately in jurisprudence. Some similar contracts have been discussed in jurisprudential books, as the jurists do not consider "Bai Al-Ma'dum" (sale of unseen goods) permissible, but they exclude an assumption, and that is "the sale of unseen goods that will be available in future," such as the case of selling tea when it is still on the plant, and it would be plucked in a future time[†††]. There are also other discussions about Bai Al-Ma'dum, such as the prohibition of selling the fruits before they have flourished in a single year or less, and there is a consensus on this matter. The jurists have mentioned the reason behind this prohibition to be the presence of 'Gharar' (risk) in the transaction. But as a consensus, it is believed that the sale of fruits after they are flourished and ready to be used is permissible, be it in a year or less[‡‡‡]. The lawyers also, despite discussing the building pre-sale contract, have allocated little writing to this subject. Therefore, investigation of the nature of such a contract with such broad use and precise description and explanation of its legal nature would solve many problems the courts and contract parties are struggling with. However, no law has yet been passed by parliament to determine its nature.

[***] H. Alizadeh, *Building Pre-Sales Contracts* (Tehran, 2004), 9.

[†††] M.J. Jafari Langroudi, *Extensive in Legal Terminology* (Tehran, 1999), 11.

[‡‡‡]Z.A.A. Shahid, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah* (Qom, 1426), 73; Najafi, *Jawahar al-Kalam, Dar al-Ehya al-Torath al-Arabiyah*, 56-59.

Only in 1980, a bill to support housing buyers and developers was approved by the Revolutionary Council as a single article which was not sufficient regarding its generality and brevity. The law on Apartments Ownership enacted in 1965 has also not discussed the pre-sale of apartments and their legal status. Recently, the draft of the law on "building pre-sale" was prepared and enacted with some modifications by the Cabinet on November 30, 2006, and was submitted to the parliament as a bill. This bill was finally approved by the Islamic Consultative Assembly on 10/21/2010 and took legal form. This law includes 28 articles and is organized into three chapters.

Effects of Deadline in Bai Salam Contract and Apartment Presale

In fact, what is mentioned in jurisprudence under the title of pre-sale is "Bai Salaf" or "Salam." Bai Salaf is "selling a commodity that is guaranteed to be delivered by the seller in a recorded time (i.e., its type and descriptions are clear) in return for a known property (price) that is paid at the time and place of contract conclusion and the time for delivery of the object of sale is determined with a specific form[§§§]". In a Bai Salaf, the buyer is named 'Moslem,' the seller is named "Moslam Ilayh," and the property presold is named "Moslem Fih." The jurists and lawyer have mentioned some conditions for the Bai Salaf that should be observed. Among these conditions, the first one mentions the material of the object of sale. By the object of sale in the Bai Salaf, the generic property that is sold and purchased, such as the wheat or barley, is meant[****]. In other words, the object of sale in a Bai Salaf should be a generic property that is guaranteed to be delivered by the seller. The second condition is the expression of the specifications of the object of sale. Here, description is the information by which the type of object of sale is clarified and distinguished from other types of objects, and it also plays a vital role in the determination of the price.

The third condition is the payment of the price at the time and place of contract conclusion. This price should be paid completely, and if a condition is stipulated in the Bai Salaf to pay a portion of the price in maturity, the price of the contract of sale is due, and also the maturity will be canceled, since, in case of maturity of the price, it becomes "Kali be Kali" (debt for debt transaction) and in case of the price being due, it is determined how much of the object of sale is delivered for the cash payment and how much is delivered in maturity[††††]. The fourth condition is that the object of sale, and if required, the price, should be specified and determined by a measure, weight, or number. The fifth condition is that the deadline for the delivery of goods should be precisely determined. And finally, the sixth condition is that the object of sale should be abundantly found at the time of delivery[‡‡‡‡]. These conditions have also been mentioned by some other jurists and lawyers. Now the question is that considering these descriptions, can an apartment which is not constructed yet be presold in a contract under Bai Salaf?

[§§§] Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah*, 91.
[****] Ibid., at 92.
[††††] Al-Mousavi al-Khomeini, *Al-Bayy* (Qom, 1410), 225; Najafi, *Jawahar al-Kalam, Dar al-Ehya al-Torath al-Arabiyah*, 289.

[‡‡‡‡] Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah*, 97.

To answer this question, an investigation of some of the conditions mentioned previously is necessary. First, it was mentioned that the object of sale in a Bai Salaf should be generic, and it should be guaranteed by the seller, while we know that the apartment in a building pre-sale contract is non-fungible and can only be sold or purchased with determined specifications. The generic being of the object of sale in a Bai Salaf can also be inferred from the ultimate condition mentioned in this contract since it should be abundant at the time of delivery. Such a feature can be only realized for generic properties that have abundant similar cases and matches since a non-fungible property has only one version. By the way, what can be guaranteed is generic. In the Bai Salaf also, the object of sale is upon the seller, so it should be generic. But in case the issue of generic nature of the presold apartments is raised, like the case in which the mass constructed apartment units are considered to be similar and can be considered as generic property, these conditions, i.e., the generic nature of the presold property, will be met by the Bai salaf and it would be possible to presell this type of apartment units in a Bai Salaf.

Another condition that was mentioned was that the price should be completely received at the time and place of the contract conclusion, and in case it is going to be paid in maturity, the contract will be canceled[§§§§]. It has also been emphasized in Clause (b) of Article 7 of the executive instructions of futures trading approved by the Monetary and Credit Council in 1984 ("payment of the complete price of goods presold in the contract to the seller at the time of contract conclusion")[*****]. However, based on what is mentioned in the building pre-sale contract, the price should be paid to the seller in installment and proportionate to the completion of construction phases, as Article 15 of the law on building pre-sale has also asserted it, and considered the payment in installments to be based on the agreement between the parties of the contract, but it also asserts that at least 15% of the price can be received by the seller at the time of contract conclusion. Thus, it is seen that if we interpret the building pre-sale contract as a form of a Bai Salaf, the installment of the building's price will lead to the cancellation of this contract. Therefore, the building pre-sale contract cannot be considered as a form of Bai Salaf. So, it is seen that the sale of apartment units that are considered generic based on the descriptions mentioned previously would be contradictory with this condition of Bai Salaf, and the possibility of selling this type of generic apartments in a future sale would be restricted.

As was seen in the previous paragraphs, the Bai Salaf is considered as a Bai Kali in terms of the subject and nature, and in fact, in this type of Bai also, like the Bai Kali, the generic property is sold, so that the commitment to the delivery of goods will remain upon the seller and it would be delivered to the buyer in future. However, the main difference between this Bai and Bai Kali, which actually distinguished it from Bai Kali, is that in Bai Salaf, the price should be completely paid in cash at the time and place of contract conclusion, and it is not possible to pay it in installment. Otherwise, the contract would be canceled based on what was mentioned above, while it is possible to pay the price in installments in the Bai Kali, since the existence of a deadline for delivery of goods is not necessary for

[§§§§] Katouzian, Nasser, *General Theory of Obligations, Mizan, Fifth Edition*, (Tehran, 2010) 30.
[*****] Alizadeh, *Building Pre-Sales Contracts*, 58.

a Bai Kali, to be considered as a Bai Kali Bil Kali (debt for debt) relative to the price to be paid in installments and thus, cancel the contract. Accordingly, the Bai Kali and Bai Salaf cannot be the same.

Effect of deadline in a generic object of sale

One type of contract of sales that is also mentioned in the Civil Code is the contract of sale of Kala fi Zemmeh (generic goods). In case the object of sale is generic, i.e., it is true for many people, the Bai is valid when the amount, material, and specifications of the object of sale are mentioned (Article 351 of the Civil Code). Anyways, in this type of sale, the seller is not required to deliver a specific property to the buyer to fulfill his commitment. However, he should choose a person who has the mentioned characteristics in terms of the conditions. Therefore, in a general definition, it can be said that: “it is a property whose characteristics are fixed in mind and is true for many people in the real world. In case the commitment subject is generic, it doesn't need to exist at the time of contract conclusion since the transfer is fulfilled with the agreement. In ownership contracts such as the Bai, whenever the generic property is the subject of commitment, the transfer is done by determination of its existing example by the seller, and usually, the manifestation of this measure is the “delivery.” For example, in the sale of a few bushels of wheat or a car, the seller guarantees to prepare the wheat or the car based on the specifications in the contract and deliver it to the buyer. What is important is his ability to the preparation of the goods and execution of the commitment, and not the existence of the property at the time of contract conclusion[†††††]. What can be included by Kali fi Zemmah is the generic property. The generic property is defined as a property that has many similar cases and matches (Article 95 of Civil Code), such as cereals, sugar, rice, and so on. By similar cases and matches, those matches are meant that are completely the same as the property in a way that in convention, there are no characteristics of the property that leads to differences in selection by the people[‡‡‡‡‡].

Indeed, there are other definitions for generic property, e.g., the generic property is a property whose components are equal in terms of the price[§§§§§]. The generic and non-fungible properties are determined by the convention[******]. In this regard, it is said that a generic property can be transacted as an existing property, a property that is to be delivered at a specific time, or a property with the commitment of delivery, i.e., is the transaction is done in any of these three forms, it can be disambiguated and meet the condition of the necessity of property’s existence. However, a non-fungible property which is versus to the generic property in terms of definition, i.e., “a property which has no completely equal examples in a way that difference in its specification can affect the people’s choice or cause them to differ in choice,” can inclusively be sold in the form of existence of the exact property, and in case it is sold with payment in advance

[†††††] N. Katouzian, *General Rules of Contracts* (Tehran, 2004), 172.
[‡‡‡‡‡] M. Shahidi, *Formation of a contract of obligations*, (Tehran 2009), 281.
[§§§§§] S.M. Mohaghegh Damad, *Rules of Jurisprudence, Civil Department 1* (Tehran, 2003), 81.
[******] S. R. Mousavi Khomeini, *Tahrir al-Waseela*, (Qom, Dar al-Kitab al-Alamiyah 2000), 180.

and a set deadline, the contract would be canceled since in these cases, the object of sale remains ambiguous and it is not clear[††††††].

Based on what was mentioned, the main question is whether an unconstructed apartment can be purchased as a generic property or not? In the apartment pre-sale contract, the location, dimensions, general scheme, area, and other specifications of the building are usually determined in the building map and the contract. i.e., it is determined what the area of the apartment is, which number unit is, and on which floor it is located.The seller also guarantees to construct and deliver the apartment with the specifications mentioned in the contract and at the agreed time. Therefore, an apartment that is built with the agreed specifications, especially the same dimensions, locations, and views mentioned in the contract, is considered as a non-fungible property whose similar cases and matches cannot be found anywhere else. Although there might be other buildings or units similar to the sold apartment, since they have different prices due to different locations, it should be said that it is a non-fungible property.

As was mentioned previously, a non-fungible can only be sold except when it already exists, since otherwise, the object of sale is ambiguous and not clear, and it would lead to cancellation of the contract. In this regard, it can be concluded that the sale of an unconstructed apartment in a generic contract of sale is not possible since some specifications would remain ambiguous, and it would cancel the contract. In addition, in a generic contract of sale, the commodity ownership is not realized with the existence of the property and its ownership by the seller, and it should be determined by him as the object of sale. But in a pre-sale contract, as soon as an apartment is constructed and completed based on the specifications mentioned in the contract, the buyer would have the right to ownership of the apartment. As was mentioned, the immovable properties, including the apartment and residential units, are different in terms of the specifications, dimensions, locations, direction, price, and so on. In other words, none is like the other, and thus, it is considered a non-fungible property. However, it is not a general rule, and there are some exceptions.

Determination of a Deadline in Bai Salam and Apartment Presale

Determination of a deadline with a date that is not going to be postponed, since for the maturity payment in which the price might be different, there is the possibility of Gharar, and the evidence for the negation of Gharar approves it. What is inferred from the books “Al-Ghaniyah,” “Majma’a al-Faedah,” “Al-Borhan,” “Kifayah,” and “Tazkarah” is that there is a consensus on this sentence. And what is said to us and in “Nahj al-Hagh” is that it is mentioned in Imamiyah religion as well as the book “Mafatih” is that there is no prohibition on recording the deadline. A narrative that approves this saying is that of Ghiyas ibn Ibrahim from Imam Sadiq (PBUH), who said that Imam Ali (PBUH) has said that there are no prohibitions on the Bai Salaf unless the measure is clarified and the deadline is determined until the time the leaf fall and not until the time of harvesting. And the narrative by Abdullah ibn Sanan from Imam Sadiq (PBUH) when he asked Imam about a person who sells non-agricultural and non-palm tree products in

[††††††] M. Shahidi, *Civil Law 6* (Tehran, 2007), 23.

Bai Salam contracts. Imam answered: "he should determine the measure and the deadline[‡‡‡‡‡‡]".

It is permissible to determine a deadline with a deferment, and also, a deadline of 100 years is still valid (Ibid, 4, 264). Therefore, for the Bai Salam to be valid, a completely recorded deadline should be determined for the object of sale or the commodity, e.g., ten days, two months, or one year, etc. and it would not suffice if it is determined as on land, or at the time of harvesting, or leaf fall[§§§§§§]. Thus, the determination of a recorded deadline for what is to be delivered on the scale of the day, month, year, and the like is valid. However, a deadline as the time of harvesting or after it, or the place where the dates are accumulated would cancel the contract[*******]. The authentic narrative by Ghiyas ibn Ibrahim from Imam Sadiq (PBUH) who cited Imam Ali (PBUH): "there is no problem to sell in a Salam with a determined measure and deadline, but delivery at the time of harvesting and gathering is not permissible[†††††††]". Sahihah Zorareh cites Imam Sadiq (PBUH): "no problem to sell an animal or commodity in a Bai Salam if the dimensions of the commodity are determined and the teeth of the animal are counted[‡‡‡‡‡‡‡]". Now, with this jurisprudential approach to the law on apartment pre-sale, it is not possible to determine the object of sale at the beginning of the contract, but it would be possible in the future and the due deadline.

Now, according to Article 361 of the Civil Code, if in a generic sale contract it is revealed that the object of sale does not exist, the contract is canceled and obviously, in the apartment pre-sale contract, generally, at the moment of conclusion of the contract, the object of sale does not exist, and it is appointed that the constructor constructs it, based on the specifications mentioned in the contract. Shahid Sani believes that the sale of a house that is to be constructed at a later time is not valid. He, based on the non-existence of the object of sale in such transaction, infers that such non-existence can be realized in two forms; one is that it existed before the contract conclusion, but it does not exist and is destroyed at the time of the contract conclusion, like a house that was ruined before the sale, and the other is that it has not come to existence at the time of the contract, yet, like when the object of sale is a house that is to be constructed based on a determined map and with specified material in a determined land. Such transaction is a generic sale, and in both cases, a contract of sale in which a commodity or its benefits are transferred without its existence is not valid[§§§§§§§]. However, Katouzian's opinion is different, and he, in another inference, expresses that since both parties set conditions according to which the ownership is realized after the existence of the property, and the contract of sale is not faced with the previous doubt, because the right to ownership is transferred after construction of the commodity and it is never based on what that does not exist. In other words,

---

[‡‡‡‡‡‡]M. Najafi, *Murid al-Anam fi Sharh Sharia al-Islam*, (Najaf, 1812), 245.

[§§§§§§] A.M. Khorasani, *Sharh Tabsarah al-Motaallemin* (Qom, 1997), 438.

[*******] S.T. Qomi Tabatabaei, *al-Dalael fi Sharh Montakhab al-Masael* (Qom, Iran 1423 AH), 2 and 110.

[†††††††] Hor Ameli, *Vasael al-Shia* (Beirut, 1414), 58.

[‡‡‡‡‡‡‡] Ibid., at 56

[§§§§§§§] Shahidi, *Formation of a contract of obligations*, 309.

the ownership is realized when the object of sale exists[********]. Now, with this inference, some doubts may arise. How is it possible to conclude a contract of sale of an object that does not exist but can lead to ownership through the contract? Also, it is not possible to own something that does not exist. And this ownership is realized based on the agreement and will of the parties, and it is not illogical in these credit affairs, and that is why Article 189 of the Civil Code has accepted the conditional contract and validated it.

Bai of Moslem Fih Before Deadline is Expiration

It is not permissible for the buyer to buy the object of sale in a Bai Salam before deadline expiration, but it is permissible after it. However, based on Ahwat (more cautious), except that it is Makruh (disapproved but not absolutely unlawful), is the prevention of Bai to more than what is bought. This assumption has two forms, a) he buys the object of sale from someone other than the seller, which is not permissible due to the consensus and the text of the narratives. Also, a contract of sale of something that is not generic is not permissible since the object of sale is to be delivered on a deadline and the object of sale does not exist before it is passed, and b) He buys it from the seller. In this assumption, we consider the contract of sale permissible[††††††††]. Whoever buys something in a Bai Salaf is permitted to sell the same property to the same seller on the condition that the price should not exceed if the property is the same. However, selling it to someone other than the seller before the deadline has come is the case when the property is not measured or weighed. But when the property is sold measured and weighed, it is not permissible to sell it in a Murabaha or even after the deadline expiration[‡‡‡‡‡‡‡‡]. In a notice by Allameh, it is mentioned that:

- If a sick person pays 10 Dirhams (price) in a Bai Salam for one Qafiz (unit of measurement of land) of wheat, which is equal to a deferred 10-Dirham, and dies before the deadline has come, in this assumption, the heirs are free to permit the Bai Salam concluded by the sick person, and in case they reject the deadline in their favor, which is two-third of the time, then, the seller will be free to terminate the Bai Salam and take all of the property back or take two-third of it, and terminate the remnant one-third or keep it as guaranteed in the contract, or change the contract in a way that he delivers the two-third that is upon him in advance and keep one-third for the deadline to come. In any of these cases, the heir's right to terminate would be denied.
- In case the sick person in a Bai Salam agrees to deliver one Qafiz of wheat that the amount that equal to two-third of the price, in this assumption, the heirs are free about its deadline, and also the seller has Al-Khiyar (the option to rescind the contract).
- If the thick person in the Bai Salam of one Qafiz of wheat delivers two-third of the price, which is equal to ten Dirhams, the heirs have the right to object in terms of the deadline and also, in terms of calculations, more than one-

[********] Katouzian, *General Rules of Contracts*, (Tehran, 2004), 275.

[††††††††] Qomi Tabatabaei, *al-Dalael fi Sharh Montakhab al-Masael*, 4, 425-426

[‡‡‡‡‡‡‡‡] Sh.B. Irwani, *Dorus al-Tamhidiyah fi al-Fiqh al-Estedlali ala al-Mazhab al-Jafari* (Qom, 2018), 79-81 third of it. Therefore, if they do not permit the contract, the seller is free to terminate it and take the property back, or he can terminate two-thirds of it and take two-third of the property back and keep one-third for the deadline expiration[§§§§§§§§]. Also, if the buyer buys a thing in a Bai Salaf, its sale is not permissible before the deadline expiration. Therefore, it is not logical to deliver it before the deadline has come unless the parties agree to terminate the deadline[*********]. Thus, selling the goods before their delivery is Makruh. Some have asserted that this Kirahah (aversion) is about the edible goods and some others consider that it is about the goods that can be measured and weighed.

Bai Moslem Fih After Deadline Expiration

If the seller delivers the object of sale as it has been sold after the deadline has passed, the buyer is obliged to accept or terminate the seller commitment for delivery, and in case he refuses to do one of the two, the seller should deliver the property to the buyer in a way that it is conventionally considered a seizure, and in case it is not possible, the ecclesiastical judge can take the possession of the property on behalf of the buyer. If the ecclesiastical judge is not present, a just person can do this, and otherwise, the buyer can keep it, and in this case, nothing would be upon the seller. If the property is delivered without the specifications in the contract or the subject determined in it, the buyer is not obliged to accept it, such as the case what is delivered is more than the buyer's right, in which the buyer is again not obliged to accept. But in case a quality good or property is delivered, there are controversies bout the obligation of acceptance by the buyer, and based on caution, the rights of both parties should be observed[†††††††††]. If the object of sale is delivered after the deadline is passed, the buyer is free to choose between the termination of the contract or requesting the price or something equal to property.

Based on the religious rules. The assumption of the permissibility of the termination and obligation to Khiyar is due to Ertekazi (mentally established) conditions differences, but the permissibility of waiting is based on the primary rule. However, the permissibility of receiving the substitution to the object of sale is not a reason for it. Also, the permission to receive Heiluleh Badal (Substitute of equal value given by usurper) has no credited grounds. Anyways, there is no payment for termination of the contract, and not only are there no reasons for termination, but also there are reasons otherwise[‡‡‡‡‡‡‡‡‡]. And if the deadline is passed and the delivery of the property is delayed due to an accidental reason, and it is demanded again after the interruption, in this case, there is an option between termination and wait. The reason behind it is that there are no controversies between the jurists about this issue. The expurgation of this issue is as follows: if delivery of the property is delayed after the deadline is passed, or due to delivery's disruption, or its non-existence, or the seller's failure in delivery, or other accidents made by the seller, or buyer, or both of them, then the

---

[§§§§§§§§] J.M. Allameh Helli, H. Y. Motahar Hali, *Tazkereh al-Qaqah* (Tehran, 2009), 541-542
[*********] Najafi, *Murid al-Anam fi Sharh Sharia al-Islam*, 293.
[†††††††††]Qomi Tabatabaei, *al-Dalael fi Sharh Montakhab al-Masael*, 4, 130.
[‡‡‡‡‡‡‡‡‡] Qomi Tabatabaei, *al-Dalael fi Sharh Montakhab al-Masael*, 4, 431.

appearance of the ruling is fixed in this case, either the buyer demand the delivery or wait[§§§§§§§§§].

The ability to deliver the object of sale in the determined deadline

The seller sets a date for the delivery in which the property can be found generically and is deliverable. And if the conditions are set for the seller to deliver the property in a specific place and he fails to deliver, or an accident happens, the buyer is free to choose between the wait or acquiring the price without any excess, or by something as a substitute as agreed by the two parties[**********]. If the object of the sale incidentally become rare at the time of delivery, according to Shahid Sani and some other jurists, if it was Bai Mu'ajjal and the property is usually accessible after some time, the buyer is free to terminate the contract and take the original property paid back, since he has not achieved what is his right, but there will be no loss, and he can wait to receive the property. On the other hand, based on potent narratives, this option is not instant, and the buyer can wait first, and if the property is not prepared, then he can apply his option. In terms of the rarity of the object of sale, if the seller becomes absent at the time of delivery or refuses to deliver, or dies before the deadline has come[††††††††††]. Another discussion on this subject is that if the buyer wants to seize a portion of the property on the deadline, here again, he is free to terminate the original contract or merely accept the portion seized. If he accepts the seized amount, he can accept the remaining price (Ibid). Here also, he is free to terminate the original contract or merely accept the portion seized. If he accepts the seized amount, he can accept the remaining price (Ibid).

Delivery of the Object of Sale with a Property other than Specified in the Contract

If the seller wants to deliver goods that are different from what has been specified in the contract on the deadline, it is permissible by a majority of jurists[‡‡‡‡‡‡‡‡‡‡]; however, the buyer is not obliged to accept. Thus, if he does not accept it, he can terminate the contract and take the price back. In case he accepts it, the contract would be obligatory in the same manner. In case of acceptance of goods with different material, since the buyer has invalidated his right to the mentioned goods by this action, the Bai is valid [§§§§§§§§§§] and in the case on the deadline, the seller delivered the same object of sale specified in the contract, its acceptance by the buyer would be obligatory.

[§§§§§§§§§] Najafi, *Jawahar al-Kalam, Dar al-Ehya al-Torath al-Arabiyah*, 326.

[**********] Irwani, *Dorus al-Tamhidiyah fi al-Fiqh al-Estedlali ala al-Mazhab al-Jafari*, (Qom, 2011), 82

[††††††††††] J.M. Allameh Helli, H. Y. Motahar Hali, *Tazkereh al-Qaqah*, 196; A. Lotfi, *translation of legal issues* (Sharh Lameh), (Tehran, 2001), 135.

[‡‡‡‡‡‡‡‡‡‡] Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah*, 405; H. E. Golpayegani, *Hefayah al-Ebad* (Qom, 1992), 389; M.S. Rouhani, *Minhaj Al-Saleheen* (Qom, 1990), 68.

[§§§§§§§§§§] Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah*, 405; S.R. Mousavi Khomeini, *Tahrir al-Waseela* (Qom, Dar al-Kitab al-Alamiyah 2000), 545; Lotfi, *translation of legal issues*, 138.

Delivery of Inferior Property or More or Less Moslem Fih

If the delivered goods are the same as to the object of sale in terms of material but have a better quality: according to some jurists such as Shahid Avval and Shahid Sani, its acceptance is obligatory since it is an example of benignity and a kind of obstinacy, and since the goodness characteristic is inseparable from the contract, and depends on the object of sale, its acceptance is obligatory for the buyer[***********]. However, some other jurists believe in the non-obligation of acceptance in this regard[†††††††††††]. Goods-for-goods pre-sale (such as pre-sale of wheat for fabric): in this type of Salaf, if the material of the goods is different, such as the case mentioned above, it can be validated by citing the narratives, like those in terms of Salaf in the book "Vasael al-Shia"[‡‡‡‡‡‡‡‡‡‡‡]. b) Goods-for-goods pre-sale with both goods being from the same material, but not the goods that can be measured or weighed: fabric-for-fabric pre-sale, this type of Salaf is also permissible based on the narratives on Bai Salaf (Ibid).

Conclusion

Bai Salam is one of the elemental contracts in which the deadline is the element of the contract, the price is Haal, and the object of sale is Mu'ajjal. In terms of apartment pre-sale, unlike the Bai Salam, the price is paid in installments and not in cash, and the object of sale has a delivery deadline, and it is determined and recorded in the contract if the deadline is not determined, the contract will be terminated. The Bai Salam is not defined in the substantive law in a jurisprudential sense, and it is silent. Only in Article 341 of the Civil Code, which guarantees the presence of a deadline for delivery of the object of sale or payment of the price, which is not the case with the Bai Salam, and the legislator enacted the law on apartment pre-sale as kind of buyer support, so that the contracts can be concluded in the form of an official document in the notary public offices and as a result, the acquisition of ownership of the parties should be facilitated, unlike the current and conventional procedure of the pre-sale with the normal document that because not being official, led to numerous lawsuits in the courts of justice, while the object of sale in the mentioned law is a tangible property and since it is determined in the contract, it would be ambiguous and Gharar otherwise, based on the evidence from Prophet's prohibition of Gharar, that invalidates the contract. Determination of the deadline or object of sale is necessary in the apartment pre-sale contract, and in case the deadline is not determined, the contract would be invalidated again. In the law on apartment pre-sale, the deadline for delivery of the property is set in a way that it will be realized in the future. Article 189 of the Civil Code has accepted the conditional contract, and it is in line with the law on apartment pre-sale in terms of validity. Bai Moslem Fih before the deadline has come is not permissible. However, it is permissible after it. And if the property becomes rare at the time of delivery, the buyer is free to choose between the termination and signature, and deadline in this regard has different forms based on the delivery of the object of sale, and it is

[***********] Shahid Thani, *Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah*, 405; Ibid., at 138.
[†††††††††††] M. Momen Qomi, *Istisna ', Ahl al-Bayt Fiqh Magazine* (Qom, 1997), 30.
[‡‡‡‡‡‡‡‡‡‡‡] Hor Ameli, *Vasael al-Shia* (Beirut, 1414), 58.

very effective on deferment of the generic object of sale. Examples of such contracts can be futures sales, in which the object of sale is delivered to the buyer at a specific deadline. Now, what is common between the Bai Salam and apartment pre-sale in terms of the object of sale is that it is generic in both contracts. However, there are different effects, and is the nature of the apartment pre-sale contract Bai or not? It seems that based on the Article 10 of the Civil Code, this contract can be considered valid, and according to the Quranic verse "اوفوا بالعقود" (fulfill your obligations) it is a binding private contract with its own specific contract.

References

A. Lotfi, translation of legal issues (Sharh Lameh), (Tehran, 2001).
A.M. Khorasani, Sharh Tabsarah al-Motaallemin (Qom, 1997).
Al-Mousavi al-Khomeini, Al-Bayy (Qom, 1410).
Anvari, Bozorg Sokhan Encyclopedia (Tehran, 2002).
Assaggaf, H. M. (2021). Antimicrobial Effects of the Laundering Process Applied to Household Linens in the Hotels of Makkah City. International Journal of Pharmaceutical Research & Allied Sciences, 10(3), 64-69.
H. Alizadeh, Building Pre-Sales Contracts (Tehran, 2004).
H. E. Golpayegani, Hedayah al-Ebasd (Qom, 1992).
Hor Ameli, Vasael al-Shia (Beirut, 1414).
I. Helli, Jame'a al-Modarresin (Qom, 2007).
I.H. Al-Jowhari, Al-Sahah (Dar Al-Kitab Al-Arabiya, Beirut, 1402 AH).
J.M. Allameh Helli, H. Y. Motahar Hali, Tazkereh al-Qaqah (Tehran, 2009).
M. Ibn Manzoor, Lisan Al-Arab, Dar Al-Haya Al-Tarath Al-Arabi (Beirut, 1408 AH).
M. Moin, Mohammad, Farhang-e Farsi (Tehran, 1981), 27; Anvari, Bozorg Sokhan Encyclopedia (Tehran, 2002).
M. Momen Ghomi, Istisna ', Ahl al-Bayt Fiqh Magazine (Qom, 1997).
M. Najafi, Murid al-Anam fi Sharh Sharia al-Islam, (Najaf, 1812), 245.
M. Shahidi, Civil Law 6 (Tehran, 2007).
M. Shahidi, Formation of a contract of obligations, (Tehran, 2009).
M.H. Najafi, Jawahar al-Kalam, Dar al-Ehya al-Torath al-Arabiyah (Beirut, 1981), 267.
M.J. Jafari Langroudi, Extensive in Legal Terminology (Tehran, 1999).
M.M. Al-Zobaydi, Taj al-Arous min Jawahir al-Qamus (Dar al-Qukr, Beirut, 1414 AH).
M.M. Jazri, al-Nahaya fi Gharib al-Hadith va al-Athar (Dar al-Maarefah, Beirut, 1423AH).
M.S. Rouhani, Minhaj Al-Saleheen (Qom, Medina Al-Alam 1410 AH).
N. Katouzian, General Rules of Contracts (Tehran, 2004).
N. Katouzian, General Theory of Obligations, Mizan, Fifth Edition (Tehran, 2010).
N.H. Mohaqeq Helli, Sharia al-Islam, one volume, first edition (Qom, 1408).
Panasenko, S. V., Cheglov, V. P., Ramazanov, I. A., Krasil'nikova, E. A., Stukalova, I. B., & Shelygov, A. V. (2021). Improving the innovative development mechanism of the trade sector. Journal of Advanced Pharmacy Education & Research| Jan-Mar, 11(1), 141-146.
S. Al-Khoury Al-Shartouni, Aqrab al-Mawardafi Masrah al-Arabiya wa Shaward (Dar al-Asho, for printing and publishing, Iran, 1374 A.H).
S. R. Mousavi Khomeini, Tahrir al-Waseela (Qom, Dar al-Kitab al-Alamiyah 2000).

S.A Khansari., Jame’a al-madarek fi Sharh Mokhtasar al-Nafe’e, (Tehran, 1985).
S.M. Mohaghegh Damad, Rules of Jurisprudence, Civil Department 1 (Tehran, 2003).
S.S.H.R. Ghomi, Minhaj Al-Saleheen (Al-Rouhani, 1435).
S.T. Ghomi Tabatabaei, al-Dalael fi Sharh Montakhab al-Masael (Qom, 1423 AH).
Sh.B. Irwani, Dorus al-Tamhidiyah fi al-Fiqh al-Estedlali ala al-Mazhab al-Jafari (Qom, 2001).
Z.A.A. Shahid Thani, Al-Rawdha al-Bahiyya fi Sharh al-Maaoh al-Dameshghiyah (Qom, Arghavan Danesh1426 AH).
Suryasa, I. W., Rodríguez-Gámez, M., & Koldoris, T. (2021). Health and treatment of diabetes mellitus. International Journal of Health Sciences, 5(1), i-v. https://doi.org/10.53730/ijhs.v5n1.2864
Widjaja, G. (2021). Impact of human resource management on health workers during pandemics COVID-19: systematic review. International Journal of Health & Medical Sciences, 4(1), 61-68. https://doi.org/10.31295/ijhms.v4n1.850