

# NRIs can dispose of properties in India

A non-resident Indian can transfer by way of sale the properties acquired by him in India to a person resident in the country or an Indian residing abroad

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Last week's column addressed the inheritance rights of non-resident Indians (NRI) and persons of Indian origin (PIO) with respect to immovable property in India, under the provisions of Foreign Exchange Management Act, 1999 (FEMA). In summary, an NRI and PIO may acquire any immovable property in India (including residential, commercial, agricultural, plantation and farmhouse properties) by way of inheritance/legacy from a person resident in India or outside India, provided the deceased person had acquired the property in compliance with the foreign exchange law in force, at the time of acquisition of the property.

Apart from rules governing inheritance of immovable property in India by NRIs and PIOs, the provisions of FEMA also stipulate strict rules for the purchase and disposal of immovable them.

Some key points to bear in mind are given below:

## Buying property

NRIs and PIOs are permitted to purchase any type of immovable

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property in India, including commercial and residential properties, other than agricultural property, plantation, or a farmhouse. A property may be purchased without any limitations on the number or size of the properties. NRIs and PIOs are not required to seek any prior permission from Reserve Bank of India (RBI) for purchasing a residential/commercial property in India. They are also not required to file any documents with RBI after having purchased a residential/commercial property under the general permission.

Payment of the sale consideration can be made only from funds that have been remitted to India through normal banking channels or from funds held in an NRE/NRO/FCNR(B)\* account maintained in India. Such payments cannot be made in foreign currency or by traveller's cheques or any other mode, except those that have been specified by RBI.

## Selling property

An NRI can transfer by way of

sale the residential/commercial properties acquired by him in India to (a) a person resident in India, or (b) a person resident outside India who is a citizen of India, or (c) a person of Indian origin resident outside India. However, a PIO can transfer by way of sale the residential/commercial properties acquired by him in India to a person resident in India. As regards sale to any other entity NRIs and PIOs have to obtain prior permission from RBI.

## Repatriation of sale proceeds

For an NRI/PIO who wants to sell an immovable property, rules for outward remittance come into play. Importantly, the immovable property being sold should have been acquired as per provisions of applicable foreign exchange law in force when it was acquired. In the event of sale of immovable property by NRI/PIO other than agricultural land/farmhouse/plantation property in India, repatriation of the sale proceeds outside India may be allowed subject to certain conditions.

The amount to be repatriated does not exceed the amount that was paid (from foreign exchange



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received through normal banking channels or out of funds in FCNR/NRE account) for acquiring such property. However, this facility is restricted to repatriation of sale proceeds for a maximum of two residential properties.

Where the purchase price was paid from an NRO account, a maximum of US\$ 1 million per financial year can be remitted from sale proceeds of immovable property.

The authorised dealer bank being satisfied about the transaction, supporting documentary evidence submitted to it, and payment of applicable taxes as prescribed by the central board of direct taxes from time to time being made. As regards

remittances that exceed US\$ 1 million in any financial year, NRIs and PIOs have to obtain prior permission from RBI.

There are cases where, despite an NRI/PIO having invested some funds towards purchasing an immovable property, the transaction does not materialise into an ultimate sale-purchase for various reasons (for instance, on account of non-allotment of property or cancellation of bookings). In such cases, the provisions of FEMA allow refund of application/earnest money/purchase consideration to be made, together with interest, if any (net of applicable income tax). In bona fide transactions, such refund of amounts would be allowed by way of credit

to an NRE/FCNR (B) account, provided the original payment had also been made either out of NRE/FCNR (B) account or from funds that had been received via inward remittance through normal banking channels.

When contemplating sale-purchase transactions, NRIs and PIOs must refer to the latest rules stipulated by RBI from time to time.

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