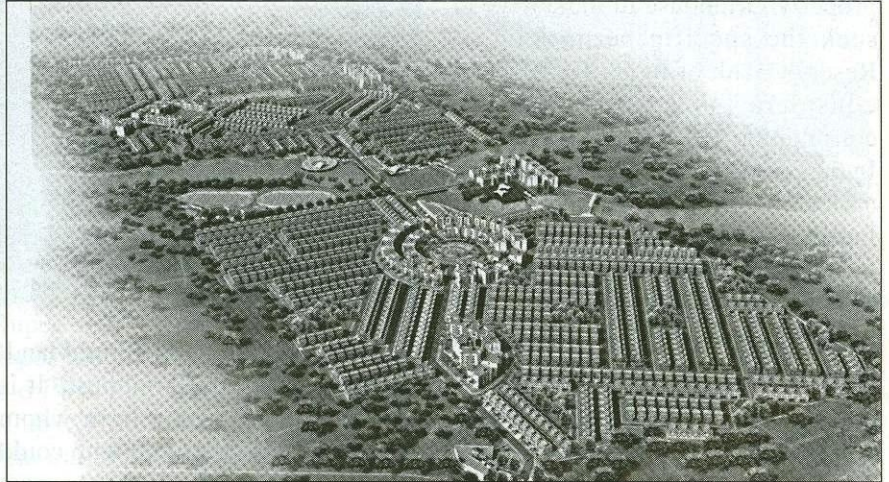




NRI investment norms eased

What are the rights and entitlements as well as limitations and restrictions on the acquisition of immovable property by NRIs/PIOs? Sunil Tyagi takes a look at the nitty gritty involved in the exercise.

The real estate sector in India is becoming an increasingly attractive option for investments promising good returns, for not only Indian residents but also Indians residing abroad. Given the monies / risks involved, the importance of making an informed decision and investment that is in compliance with rules governing the purchase / sale / other modes of transfer of immovable property cannot be stressed enough. This article enumerates the rights and entitlements as well as the limitations



and restrictions on the acquisition, holding and transferring of immovable property in India by a Non-Resident Indian (NRI) or Person of Indian Origin (PIO) under the existing regulatory framework of India.

grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955.

Acquiring immovable property

NRI and PIOs are permitted to purchase residential and commercial property in India without seeking any prior permission and without any limitations on the number or size of such properties. When purchasing a residential/commercial property, an NRI/PIO can make requisite payments 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. They are not permitted to make payments against such purchase in

NRI and PIO – Qualifying Criteria

An NRI is a citizen of India resident outside India. PIO refers to an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who (a) at any time held an Indian passport; or (b) who or either of whose parents/



Obtaining Certificate of Encumbrance reflecting conveyance of UDS.

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foreign currency or by traveller's cheques or any other mode except those specified by RBI.

However, NRIs/PIOs wishing to purchase agricultural land/plantation property/farmhouse in India have to seek the specific permission of Reserve Bank of India (RBI) which considers such proposals in consultation with the Government of India. Where a person has acquired agricultural land/plantation property/farmhouse when he was a resident in India, such person may continue to hold these properties even after becoming an NRI/PIO without the approval of RBI.

Further, NRIs and PIOs may acquire residential and commercial property (not being agricultural land/plantation property/farmhouse) by way of gift from a person resident in India or another NRI/PIO. NRIs and PIOs can acquire by way of inheritance any immovable property



in India, including agricultural land/plantation property/farmhouse. It is crucial that the person from whom the property is inherited (who could be a person resident in India or person resident outside India) should have acquired such property in accordance with the provisions of foreign exchange law in force or FEMA regulations.

Holding immovable property

NRIs and PIOs do not require any prior approval for leasing / renting out residential/commercial properties owned by them (irrespective of whether such property is purchased from rupee/foreign exchange funds). The rental money received can either be credited to an NRO/NRE account

Transferring residential/ commercial property

By Sale

NRI

Can sell to person resident in India**; NRI; or PIO.

PIO

Can sell only to a person resident in India**.

By Gift

Can gift to person resident in India; NRI; or PIO.

If property is being gifted to a foreign national of non-Indian origin, prior permission of RBI is required.

Can gift to person resident in India; NRI; or PIO.

If property is being gifted to a foreign national of non-Indian origin, prior permission of RBI is required.

Transferring agricultural/ plantation/ farmhouse property

By Sale

NRI

Can sell only to person resident in India.**

PIO

Can sell only to a person resident in India who is a citizen of India.

By Gift

Can gift only to person resident in India.**

Can gift only to a person resident in India who is a citizen of India.

or remitted abroad. If current income such as rental income, pension, interest, etc. is being remitted abroad, NRIs and PIOs need appropriate certification by a qualified Chartered Accountant, certifying that the amount proposed to be remitted is eligible for being remitted and applicable taxes on it have been paid for.

Transferring immovable property

The restrictions and prescriptions on transfer of immovable property by a PIO/NRI differ with respect to the nature of immovable property being transferred and mode of transfer viz. sale and gift.

Prohibition

A citizen of Pakistan, Bangladesh, Sri Lanka, Afganistan, China, Iran, Nepal or Bhutan is not permitted to acquire / transfer any immovable property in India (except by way of lease for less than 5 years) without prior permission from RBI.

Outward remittances

Outward remittances by NRIs and PIOs of proceeds obtained from selling their property in India are also regulated. The immovable property being sold should have been acquired as per provisions of applicable foreign exchange law in force at the time of its acquisition. Secondly, the amount to be repatriated should not exceed the amount that was paid for



acquiring such property.

If the property was bought out of Rupee sources and its sale proceeds deposited in an NRO account, NRIs and PIOs may repatriate an amount of up to USD 1 Million per financial year out of the balances held in such NRO account, for bonafide purposes, subject to satisfying the Authorized Dealer bank and compliance with taxes. In the event the property being sold was acquired by way of gift/inheritance from a person resident in India, the sale proceeds should be credited to an NRO account only. Upon production of valid documentary evidence supporting such gifting/inheritance of property alongwith tax clearance certificate, NRIs and PIOs may repatriate an amount of up to USD 1 Million per financial year out of the balances held in such NRO account, subject to the satisfying the Authorized Dealer bank. Also, remittances exceeding USD 1 Million per financial year

requires prior permission of RBI. On the other hand, if the property being sold was acquired out of foreign exchange sources, the amount that can be repatriated should not exceed the amount that was paid for it in foreign exchange received through normal banking channels. Here, it is important to note that sale proceeds from only a maximum of two residential properties can be repatriated.

When contemplating purchasing or selling property, NRIs and PIOs must refer to the latest guidelines released by RBI from time to time. Carrying out transactions in accordance with prevalent laws undoubtedly helps minimize chances of property and tax litigation in the future.

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Payment Schedule to match with Work-in-Progress.