



Sunil Tyagi, Senior Partner, Zeus Law Associates and **Surabhi Bhola**, Senior Associate, Zeus Law Associates, explain the purchase of immovable properties in India by persons resident outside India

The Perfect Purchase

Due to many compelling reasons, people residing outside India (i.e. NRI's, PIO's and foreign citizens) have been purchasing immovable properties in India ranging from flats, bungalows, independent houses, luxury villas to commercial properties. However, an NRI/PIO has to look into various aspects before purchasing immovable properties in India. Apart from the knowledge of market availability and optimum prices of the properties, an NRI or PIO desiring to purchase a property in India needs to have a clear and unambiguous understanding of regulations and procedures applicable to purchase of immovable property.

Regulating the purchase of immovable properties

Sale and purchase of immovable properties by a person resident outside India is governed and regulated by Section 6 (3) (i) of Foreign Exchange Management Act, 1999 ("FEMA"), Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 ("Regulation") and Master Circular on Acquisition and Transfer of Immovable Property in India by NRIs/PIOs/Foreign Nationals of Indian Origin ("Master Circular").

Under FEMA the criteria for acquisition and transfer of immovable property in India is governed by residential status of a person. FEMA categorises persons as 'Person Resident in India' and 'Person Resident Outside India' which has been further classified as Non-Resident Indian, Foreign National

of Indian Origin or Foreign National of Non-Indian Origin.

As defined under FEMA, Non-Resident Indian (NRI) means a person resident outside India who is a citizen of Indian. This brings us to the definition of term Person of Indian Origin. Under the Regulation, Person of Indian Origin (PIO) means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who at any time held Indian passport; or who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Section 6 (5) of FEMA provides that a Person Resident Outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Purchase of immovable properties in India by NRI

Section 3 of the Regulation deals with the acquisition and transfer of immovable properties in India, by an NRI. A general permission is granted under the Regulation to NRI to acquire by way of purchase immovable properties in India. Regulations further provide that for purchase of an immovable property in India, the payment of purchase price has to be made out of funds received in India through normal banking channels,

or funds in any non-resident account maintained as per the provisions of FEMA and regulations of the Reserve Bank of India. However, NRIs are restricted from purchasing any agricultural property, plantation or a farm house in India.

Purchase of immovable properties in India by PIO

Section 4 of Regulation deals with the acquisition and transfer of immovable properties in India by PIO. Likewise Section 3, this Section also permits a PIO to acquire by way of purchase an immovable property in India, except any agricultural property, plantation or a farm house provided payment of the purchase price is made out of funds received in India through normal banking channels, or funds in any non-resident account maintained as per the provisions of FEMA and regulations of the Reserve Bank of India.

As per the information available from the Reserve Bank of India, no restrictions have been imposed on the number of immovable properties that an NRI or a PIO may purchase either, residential or commercial. Further, the Master Circular states that an NRI or PIO who has purchased any residential or commercial property under the general permission, is not required to file any documents/permissions with the Reserve Bank of India.

Purchase of immovable properties by foreign national of non-Indian origin resident

The Master Circular provides that

foreign national of Non-Indian Origin who is resident outside India cannot acquire an immovable property in India. However, foreign national of non-indian origin resident in India in terms of Section 2(v) of FEMA can purchase an immovable property in India. As clarified by the Reserve Bank of India, a foreign national who is resided in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business / vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.

However, a foreign national of non-Indian origin who is citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank of India.

Purchase of immovable property by a foreign company

The term Foreign Company is defined under the Foreign Exchange Management Regulations, 2000 to mean a body corporate incorporated outside India and includes a firm or other association of individuals. Acquisition of immovable properties in India is regulated by section 5 of the Regulation as per which a Foreign Company which has established a branch, office or other place of business in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of



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Business) Regulations, 2000, can acquire any immovable property in India which is necessary for or incidental to carrying on such activity. The Regulation further requires that a declaration in form IPI should also be filed with the Reserve Bank of India within period of ninety days from the date of acquisition of such property.

However, acquisition of immovable property by the entities incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan who have set up branch or offices in India would require prior approval of the Reserve Bank of India.

It is further clarified that the foreign company which has established a liaison office in India cannot purchase immovable property in India but can take the immovable properties in India on lease of not exceeding 5 years.

It is to be noted that each state has its own norms with respect to acquisition of immovable property and as per such state laws may require obtaining a prior permissions for purchasing of immovable property. Thus, whether the immovable property in India is being purchased by an NRI, PIO, a Foreign National of Non-Indian Origin or a Foreign Company, the person purchaser is required to adhere to the state laws in which the immovable property is

situated in addition to complying with the norms under FEMA, Regulation and Master Circular. Accordingly, when contemplating purchasing of immovable properties in India, NRI, PIO, a Foreign National of Non-Indian Origin or a Foreign Company must refer to the latest guidelines released by the Reserve Bank of India from time to time along with then applicable state laws. Carrying out transactions in accordance with prevalent laws undoubtedly helps one minimize chances of litigation related to violation of applicable laws in the future.

Cautious approach

Most of the times, NRI's and PIO's or any other person often purchase properties in India by approaching and consulting friends, relatives and acquaintances who do not have adequate knowledge of applicable rules and regulations in this regard. Instead, the interested persons should take a cautious approach and consult the reputed real estate agencies who are well acquainted with availability of the immovable properties and also well versed with the applicable regulations in such cases. It is always recommended that apart from hiring or consulting a reputed agency, the investor should itself undertake a careful market research on its own to avoid being misled. 