

## IMMOVABLE PROPERTY - NRIS

Sri PVR Rajendra Prasad,  
rp@rprasad.com

### 1. Introduction:

Acquisition of a residential flat or house in India is a cherished dream of every Non-Resident Indian (NRI). The Foreign Exchange Management Act, 1999 (FEMA) is the gateway legislation which regulates Non-Residents buying immovable property in India. As per the present provisions of FEMA, an NRI - an Indian citizen staying outside India, and Person of Indian Origin (PIO) - a foreign citizen of Indian Origin staying outside India, are permitted to acquire immovable properties in India.

### 2. Residential Status:

**Person Resident in India:** Under FEMA, a person resident in India is defined as a person physically present in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. **In other words, 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 the preceding financial year) but has also to comply with the condition of the purpose / intention of stay.**

**Non-Resident Indian (NRI):** A Non-Resident Indian means a person resident outside India, who is a citizen of India;

**Person of Indian Origin (PIO):** Person of Indian Origin 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

- i) at any time, held Indian passport, or
- ii) who or either of whose father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955)

Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

### 3. What can be purchased by NRI/PIO

An NRI/PIO is permitted to acquire any immovable property in India other than agricultural land, plantation property and farm house.

There are no restrictions on the number of immovable properties that can be purchased by NRI/PIO and there is no requirement to file any documents with Reserve Bank of India in this regard.

### 4. What cannot be purchased by NRI/PIO:

General permission is not available to NRI/PIO to acquire agricultural land/ plantation property / farm house in India. Such acquisitions require specific approval of Reserve Bank and the applications are considered in consultation with the Government of India.

### 5. How to purchase / mode of Payment for purchase:

Payment can be made by NRI / PIO out of funds remitted to India through normal banking channels or out of funds held in NRE / FCNR (B) / NRO account maintained in India of the NRI / PIO. Further, no payment can be made either by traveller's cheque or by foreign currency notes. Care should be taken that the payment should be made directly by the NRI/PIO to the seller and no payment can be made outside India.

### 6. Housing Loan for purchase of property:

NRI/PIO can avail of housing loan in rupees from an Authorized Dealer bank or housing finance institution subject to certain terms and conditions and is permitted to mortgage such property to the Bank / financial institution without the approval of Reserve Bank. Such a loan can be repaid;

- (a) by way of inward remittance through normal banking channels or
- (b) by debit to NRE / FCNR (B) / NRO account or
- (c) out of rental income from such property or
- (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

**7. Refund of money on cancellation / non-allotment of flat/plot:**

In case of cancellation / non-allotment of flat / plot, the advance amount paid to the building agency / seller can be taken as a refund together with interest (net of Income Tax) and the proceeds can be credited to the NRE account provided that the original payment was made by way of Inward remittance or by debit to NRE / FCNR(B) account.

However, if the original payment was made out of NRO Account then the refund proceeds should be credited to NRO account only.

**8. Lease / Rent of residential / commercial property purchased by NRI/PIO:**

An NRI/PIO can rent out the property without the approval of the Reserve Bank. Rent received can be credited to NRO / NRE account or remitted abroad. NRI/PIO, who does not maintain any bank account in India, can remit rental income received based on appropriate certificate by a Chartered Accountant certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid / provided for.

**9. Sale of Immovable Property:**

An NRI is permitted to sell any immovable property other than agricultural land/plantation property / farm house to a person resident in India or to another NRI or to a Person of Indian Origin.

A PIO is permitted to sell any immovable property in India other than agricultural land, plantation property and farm house to a person resident in India. However, such sale by PIO to another PIO or NRI requires prior approval from Reserve Bank of India.

An NRI/PIO is permitted to sell agricultural land / plantation property / farm house (if such property were acquired either while he was resident in India or by way of inheritance or with the permission of RBI) to a person resident in India, who is also a citizen of India.

**10. Gift of property by NRI/PIO:**

An NRI/PIO is permitted to gift any immovable property in India other than agricultural land, plantation property and farm house to a person resident in India or to another NRI/PIO.

Further an NRI/PIO holding agricultural land / plantation property / farm house in India is permitted

to gift such property only to a person resident in India, who is a citizen of India.

**11. Repatriation of Sale Proceeds:**

Repatriation of sale proceeds of immovable property acquired out of foreign exchange brought into India through normal banking channels or by debit to NRE/FCNR(B) accounts is permitted subject to payment of taxes upto an amount not exceeding the original investment. However, only two residential houses' sale proceeds are permitted to be repatriated. There is no such restriction in respect of other properties.

The sale proceeds of all other properties should be credited to NRO account only. From the balance in the NRO account, remittance up to USD one million, per financial year, subject to the satisfaction of Authorized Dealer Bank and payment of applicable taxes are permitted to be repatriated.

**12. Policy Shift:**

There is a major policy shift as far as acquisition of immovable property in India is concerned. Under Foreign Exchange Regulation Act (FERA), acquisition of immovable property in India by Non Residents was governed by "citizenship" criteria, whereas under FEMA, the same is governed by "residential status" criteria. It means a foreign citizen, who is resident in India as per the definition of FEMA and is not a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan can purchase immovable property in India without any approval from Reserve Bank of India but subject to obtaining specific permissions, if any, from the relevant State Governments.

**13. Conclusion:**

As is usual in many Indian legislations, under FEMA also some of the important terms are not defined. The biggest practical problem is that the term "immovable property" is not defined under FEMA. Under some laws goods and equipment, tied to land are also regarded as immovable property. Whether tenancy rights, trees on land etc., are also immovable property? It is high time a proper definition to the term immovable property is given either by RBI or Central Government with respect to FEMA regulations. Till a clarification is given, it would be practical to assign the meaning to immovable property as is understood in common parlance.