



REAL ESTATE DEVELOPERS

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Disclaimer

This FAQ list has been compiled as a broad overview, based on the information disseminated by the various instrumentalities of the Government of the India, including the Reserve Bank of India, at their websites.

While every attempt has been made to present the latest updated information, this compilation, however, does not seek to represent itself as an alternative to the official sources of the information contained herein. The readers are strongly advised and encouraged to verify and educate themselves with the latest updated information directly from the official websites of the concerned Authority before taking any decision.

1. Definition

- **Non Resident Indian (NRI):** An Indian citizen who stays outside India
 - o For purposes of carrying out employment or any business or vocation;
 - o Under circumstances indicating an intention to stay outside India for an uncertain duration;
 - o Any Indian citizen deputed outside India for a temporary period in connection with employment. (Persons posted in U.N. organizations and officials deputed abroad by Central / State Governments and Public Sector undertakings on temporary assignments are also treated as non-residents)
 - o Non-resident foreign citizens of Indian Origin are treated on par with non-resident Indian citizens (NRIs) for the purpose of certain facilities.
- **Person of Indian Origin (PIO):** A citizen of a foreign country (other than a citizen of Bangladesh or Pakistan) is a PIO if
 - o he / she at any time held an Indian passport; OR
 - o he or either of his parents or any of his grandparents was citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1955); OR
 - o spouse (not being a citizen of Bangladesh or Pakistan) of an Indian citizen or (a) or (b) above

Note: A spouse (not being a citizen of Pakistan or Bangladesh) of an Indian citizen or of a person of Indian origin is also treated as a person of Indian origin for the above purposes provided the bank accounts are opened or investments in shares / securities in India are made by such persons only jointly with their NRI spouse.

• Person resident in India

Under FEMA, a person is defined as a resident of India when both the conditions below are satisfied:

- i) The person has been residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March); and
- ii) The person has come to or is staying 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.

Section 2 (v) of the FEMA, 1999 defines a 'person resident in India'.

- **Person resident outside India**

A person who does not fulfill any of the two conditions mentioned above can be defined as 'a person resident outside India'.

Section 2 (w) of the FEMA, 1999 defines a 'person resident outside India' respectively.

Who can determine whether a person is resident in India or not?

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.

Q. What is an "NRI account"?

A. "NRI account" is a popular connotation for Indian accounts opened for NRIs. The types of accounts that an NRI can open in India are NRE (Rupee Repatriable) FCNR (Dollar, Pound, Euro, Yen, Canadian dollars & Aus Dollars) & NRO (Rupee Non Repatriable). US residents may bear in mind that these accounts are not FDIC insured, the income may be subject to US Federal Income Tax and balances in excess of \$10,000 may need to be reported annually to the US Department of the Treasury.

Q. Am I eligible to open an "NRI account"?

A. Yes, if you are an NRI or a PIO

Q. What are NRE, FCNR and NRO accounts?

A. NRE account is a Rupee denominated account which is fully repatriable. Funds into this account will have to be received from outside India. You can open either a SB account (liquid account provided with a check book) or a Fixed deposit. The minimum period for an NRE fixed deposit is 12 months.

FCNR accounts can be opened in five different currencies viz., US dollar, Pound Sterling, Euro, Jap Yen, Canadian Dollar & Australian Dollar. They are in the form of fixed deposits only and the minimum period of deposit is 12 months.

NRO account is a Rupee denominated account which is not repatriable. This account is basically for your rupee funds generated in India. You can open either a SB account (liquid account provided with a check book) or a Fixed deposit.

Q. Can I open NRE, FCNR & NRO accounts in joint names?

A. Yes, you can open NRE & FCNR jointly provided the other person is also an NRI. These accounts cannot be jointly held with an Indian resident. NRO accounts can be jointly held with an Indian resident.

2. Acquisition of Immovable Property in India

2.1 Acquisition of Immovable property by way of purchase

Who can benefit from this document?

Individuals under following categories can be benefited.

- Non-Resident Indian (NRI): Citizen of India residing outside India.
- Person of Indian Origin (PIO): Individual (except for citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan), who
 - o has at any time held an Indian passport, or
 - o whose father or grandfather was a citizen of India, either by virtue of the Constitution of India or by the Citizenship Act, 1955 (57 of 1955).

What kind of immovable property can be purchased?

The general permission to purchasing the immovable property covers

- o only purchase of residential and commercial property; and
- o does not extend to purchase of agricultural land / plantation property / farm house in India.

Proposals for purchase of such property would require specific approval of the RBI (discussed below) considered in consultation with the Government of India.

What formalities are to be met before making a purchase?

FEMA stipulates that before making a purchase a specified form called the IPI 7 needs to be filed with the central office of the RBI along with the title deed or any other certified copy of the document proving that the NRI has executed an agreement to purchase property within the country. The form has to be filed within 90 days of the purchase of property and has to be accompanied with a bank certificate stating the consideration paid for the purchase. Permissions are generally granted without undue delays if all the relevant papers are submitted.

Is it required to file any documents with Reserve Bank of India after purchase?

NO. An NRI / PIO, who has purchased residential and / or commercial property under general permission, is not required to file any documents with the RBI.

How many residential / commercial properties can be purchased under general permission?

There are no restrictions on the number of residential / commercial properties that can be purchased by an NRI / PIO.

Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?

NO. A foreign national of non-Indian origin can only take residential accommodation on lease, provided the period of lease does not exceed five years. In such cases, there is no need of taking permission from or reporting to the RBI

Can a foreign national of non-Indian origin be a second holder to immovable property purchased by an NRI / PIO?

NO.

Can a foreign national who is resident in India as per the provisions of Section 2(v) (i) B of the FEMA, 1999 purchase immovable property in India?

- 1) YES. Approvals from concerned state governments would have to be obtained and requirements of other authorities fulfilled.
- 2) A foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan would require prior approval of the RBI considered in consultation with the Government of India.

Can an office of a foreign company purchase immovable property in India?

- 1) If the foreign company has established only a Liaison Office in India, it cannot acquire immovable property. It can acquire property by way of lease not exceeding 5 years.
- 2) If it has established a Branch Office or other place of business, in accordance with FERA / FEMA regulations, it can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity.
 - a) The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channels.
 - b) A declaration vides form IPI should be filed with the RBI within ninety days from the date of acquiring the property.
 - c) Such a property can also be mortgaged with an Authorized Dealer as security for other borrowings.
 - d) On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of RBI.
- 3) If Prior approval of RBI would be required for the acquisition of immovable property by entities that have been incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan and have set up Branch Offices in India.

2.1 Acquisition of Immovable property by way of purchase

Can immovable property in India be acquired by way of gift?

- 1) I NRIs and PIOs can freely acquire immovable commercial or residential property by way of gift, from
 - a) a person resident in India
 - b) an NRI
 - c) a PIO
- 2) However, the property can only be residential or commercial. Agricultural land, plantation property, or farm house in India cannot be acquired by way of gift.
- 3) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of gift.

2.1 Acquisition of Immovable property by way of inheritance

Can a non-resident inherit immovable property in India

- 1) YES. The following can inherit and hold immovable property in India from a person who was resident in India:
 - a) an NRI
 - b) a PIO, o
 - c) a foreign national of non-Indian origin
- 2) However, a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan would require specific approval from the Reserve Bank in such cases.

From whom can a non-resident inherit immovable property

- 1) An NRI or PIO or foreign national of non-Indian origin can inherit immovable property from:
 - a) a person resident in India or
 - b) a person resident outside India
- 2) However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange regulations applicable at that point of time

In what manner the purchase consideration for the residential immovable property should be paid by foreign citizens of Indian origin under the general permission?

The purchase consideration should be met either out of inward remittances in foreign exchange through normal banking channels or out of funds from NRE / FCNR accounts maintained with banks in India.

3. Transfer of Immovable Property in India

3.1 Transfer by Sale

Can NRIs / PIOs / foreign nationals sell their residential / commercial property

- 1) NRIs can sell their property in India to:
 - a) A person resident in India or
 - b) AN NRI or
 - c) A PIO.
- 2) PIOs can sell their property in India to:
 - a) A person resident in India, or
 - b) AN NRI, or
 - c) A PIO with the prior approval of RBI
- 3) Foreign nationals of non-Indian origin, including citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can sell property in India with prior approval of the RBI to:
 - a) A person resident in India or
 - b) AN NRI or
 - c) A PIO.

Can agricultural land / plantation property / farm house in India owned / held by a non-resident be sold?

- 1) An NRI / PIO may sell agricultural land / plantation property / farm house to a person resident in India who is a citizen of India.
- 2) A foreign national of non-Indian origin resident outside India would need prior approval of RBI to sell agricultural land / plantation property / farm house in India

3.2 Transfer by Gift

Can a non-resident gift his residential/commercial property

- 1) YES. An NRI / PIO may gift residential / commercial property to:
 - a) person resident in India, or
 - b) an NRI, or
 - c) PIO
- 2) A foreign national of non-Indian origin needs prior approval of the Reserve Bank in such a case.

Can an NRI / PIO / foreign national holding an agricultural land / plantation property / farm house in India gift the same?

- 1) An NRI / PIO can gift such property, but only to a person resident in India, and who is a citizen of India.
- 2) A foreign national of non-Indian origin would need prior approval of the RBI for such a transaction.

3.3 *Transfer through Mortgag*

Can residential / commercial property be mortgaged?

- 1) An NRI / PIO can mortgage residential / commercial property to:
 - a) An authorized dealer / housing finance institution in India without the approval of the Reserve Bank.
 - b) A party abroad with prior approval of RBI
- 2) A foreign national of non-Indian origin can mortgage residential / commercial property only with prior approval of the Reserve Bank
- 3) A foreign company that has established a Branch Office or other place of business in India in accordance with FERA / FEMA regulations has general permission to mortgage the property with an Authorized Dealer in India.

4. Mode of Payment for Purchase

How can an NRI / PIO make payment for purchase of residential / commercial property in India?

- 1) Payment can be made by NRI / PIO out of:
 - a) funds remitted to India through normal banking channels, or
 - b) funds held in NRE / FCNR (B) / NRO account maintained in India.
- 2) No payment can be made either by traveller's cheques or by foreign currency notes.
- 3) No payment can be made outside India.

What shall the option be if there is refund of application money / payment made by the building agencies / seller because of non-allotment of flat / plot or cancellation of bookings / contracts?

If the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account, the refund, together with interest (net of income tax) can be credited to the NRE account.

Can an NRI / PIO avail of loan from an Authorized Dealer for acquiring a flat / house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account / FCNR (B) account?

- 1) YES. Such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5 / 2000-RB dated May 3, 2000 as amended from time to time.
- 2) Banks cannot grant fresh loans or renew existing loans in excess of Rs. 20 lakh against NRE and FCNR (B) deposits, either to the depositors or to third parties.

- 3) Such loans 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.
- 4) Repatriation: In case the amount has been received from inward remittance or debit to NRE / FCNR(B) / NRO account for acquiring the property or for repayment of the loan, the principal amount can be repatriated outside India .
- 5) In case the property is acquired out of Rupee resources and / or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI / PIO.
- 6) Capital gains, if any, arising out of sale of the property can be credited to the NRO account.
- 7) NRIs / PIOs are also allowed by the Authorized Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account for all bonafide purposes, to the satisfaction of the Authorized Dealers, subject to tax compliance.

Can an NRI / PIO, avail of housing loan in rupees from an Authorized Dealer or housing finance institution in India approved by the National Housing Bank for purchase of residential accommodation or for repairs / renovation / improvement of residential accommodation? How can such loan be repaid?

- 1) YES. An NRI / a PIO can avail of housing loan in rupees from an Authorized Dealer or housing finance institution subject to certain terms and conditions .
- 2) Such a loan can be repaid:
 - a) by way of inward remittance through normal banking channels; or
 - b) by debit to his 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.

Can an NRI / PIO avail of housing loan in rupees from his employer in India?

Yes, subject to certain terms and conditions.

5. Repatriation of Sale Proceeds of Propert

Can an NRI / PIO repatriate the sale proceeds of immovable property? If so, what are the terms

An NRI / PIO may repatriate the sale proceeds of immovable property in India:

- If the property was acquired out of foreign exchange sources, i.e., remitted through normal banking channels / by debit to NRE / FCNR (B) account.
- 1) The amount to be repatriated should not exceed the amount paid for the property:
 - a) in foreign exchange received through normal banking channels or
 - b) by debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.
 - 2) Repatriation of sale proceeds of residential property purchased by NRI / PIO out of foreign exchange is restricted to not more than two such properties.
 - 3) Capital gains, if any, may be credited to the NRO account from where the NRI / PIO may repatriate an amount up to USD 1 million, per financial year, as discussed below:
 - If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to USD 1 million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all bona fide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance

Can an NRI / PIO repatriate the sale proceeds in case the same were deposited in NRO account?

From the NRO account, NRI / PIO may repatriate up to USD one million per financial year (April-March), which would also include the sale proceeds of immovable property.

If a Rupee loan was taken by NRI / PIO from an Authorized Dealer or a housing finance institution for purchase of residential property, can the NRI / PIO repatriate the sale proceeds of such property?

YES, provided the loan has been subsequently repaid by remitting funds from abroad or by debit to NRE / FCNR (B) accounts⁷.

If the property was purchased through foreign inward remittance or through NRE / FCNR (B) account, can the sale proceeds of the property be repatriated immediately?

Yes. The proceeds can be repatriated.

Is there any restriction on the number of residential properties for which sale proceeds can be repatriated by NRI / PIO?

Yes. Sale proceeds cannot be repatriated for more than two residential properties.

Is there any time limit of holding of property for the purpose of repatriations?

No, there is no time limit for holding the property. Such time limits earlier existing have been removed. Yes, rental income being a current account transaction is repatriable after payment of applicable taxes.

5.1 Remittance of sale proceeds of property received by way of gift.

Can sale proceeds from an immovable property be repatriated abroad by an NRI / a PIO if the property was acquired by way of gift?

- 1) The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only.
- 2) From the balance in the NRO account, NRI / PIO may remit up to USD one million per financial year, subject to the satisfaction of Authorized Dealer and payment of applicable taxes.

5.2 Remittance of sale proceeds of property received by way of inheritance.

Can sale proceeds from an immovable property be repatriated abroad by an NRI / PIO if the property was received as inheritance?

- 1) NRIs / PIOs can repatriate sale proceeds of immovable property inherited from a person resident in India, to the extent of an amount not exceeding USD one million, per financial year, on production of:
 - a) documentary evidence in support of acquisition / inheritance of assets,
 - b) an undertaking by the remitter and
 - c) a certificate by a Chartered Accountant (CA) in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10 / 2002 dated October 9, 2002 .
- 2) In case of a foreign national, sale proceeds can also be repatriated even if the property is inherited from a person resident outside India. But this is allowed only with prior approval of RBI.
 - a) The foreign national has to approach the RBI with documentary evidence in support of inheritance of the immovable property, the undertaking and the certificate from the CA as mentioned above.
- 3) The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran. Such a person would have to seek the specific approval of RBI in such a case.
- 4) As FEMA specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan, the question of repatriation

6. Provisions for Foreign Embassies / Diplomats /Consulate General

Can Foreign Embassies / Diplomats / Consulate Generals purchase / sell immovable property in India?

YES. They can purchase and sell any immovable property with prior clearance from the Government of India, Ministry of External Affairs.

- The payment should be made by means of foreign inward remittance through normal banking channels.

However, agricultural land / plantation property / farm house in India cannot be purchased or sold.

7. Other Issues

Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?

- 1) YES, NRI / PIO can rent out the property without the approval of the Reserve Bank.
- 2) Rent received can be credited to NRO / NRE account or remitted abroad.
- 3) Powers have been delegated to the Authorized Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRI / PIO who do not maintain an NRO account in India, based on an appropriate certification by a CA, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid / provided for.

Can a person who had bought immovable property when he was a resident, continue to hold such property even after becoming an NRI / PIO?

YES, he can continue to hold the residential / commercial property / agricultural land / plantation property / farm house in India without the approval of the Reserve Bank.

In which account can the sale proceeds of such immovable property be credited?

The sale proceeds may be credited to NRO account.

Can these be remitted abroad?

YES, provided the amount to be remitted does not exceed USD one million per financial year, for all bona fide purposes to the satisfaction of Authorized Dealers and subject to tax compliance.

Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of RBI continue to hold the same? Can they transfer such property?

YES, they may continue to hold the immovable property. However, they can transfer the property only with the prior approval of RBI.

Is a resident in India governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000?

- 1) A person resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.
- 2) He would require prior approval of the RBI for acquisition and transfer of immovable property in India, even though he is resident in India. Such requests are considered by the RBI in consultation with the Government in India.

Where can one find regulations / directions issued by Reserve Bank for acquisition and transfer of immovable property in India by a person resident outside India?

Regulations regarding acquisition and transfer of immovable property in India by a person resident outside India has been notified vide RBI Notification No. FEMA 21 / 2000-RB dated May 3, 2000as amended vide Notification No. FEMA 64 / 2002-RB dated June 29, 2002and Notification No. FEMA 65 / 2002-RB dated June 29; 2002and relevant directions issued in the form of A.P. (DIR Series) Circulars. These are available on RBI website: www.fema.rbi.org.in