

Preliminary Guidelines for NRI & OCC for Purchasing a Property in India  
written by Latha Shanmugam | March 3, 2020



The real estate sector has experienced a slowdown in the recent past, however, it is an undeniable truth that there was a great demand and supply in the real estate sector earlier which attracted millions of Non-resident Indians ("NRI") to invest in purchasing the properties. It is crucial to note that the purchase of property by NRI has always been a difficult task due to restrictions imposed by the Foreign Exchange Management Act, 1999 ("FEMA") and the Reserve Bank of India ("RBI"). It is very important for an NRI investor to know the legalities and limitations

involved in the purchase of a property.

To understand the requirements that are necessary for an NRI and Overseas citizen of India Cardholder ("OCC") for purchasing a property in India, it is crucial to understand the terms NRI and OCC.

#### NON-RESIDENT

INDIANS: The word

NRI has not been explicitly defined in any act or legislation, however, by the definition of the term "Person resident in India" as defined in two Acts namely,

Income Tax Act 1961 and Foreign Exchange Management Act 1999, we can understand

that NRI is an Indian citizen who resides in India for less than 182 days during the preceding financial year and stays abroad for the purpose of employment or carrying business or vacation outside India.

OVERSEAS CITIZEN OF INDIA CARDHOLDER: As defined under section 7A of the Citizenship Act, 1955, a person registered as an OCC under the Citizenship Act

shall acquire the citizenship of India on basis of Overseas Citizen of India subject to conditions<sup>[1]</sup>.

Purchasing

property in India for an NRI's has always been a debatable issue. The dilemma of whether to purchase or not, if willing to purchase what may be the consequences has always been there. Few guidelines to help avoid such a dilemma

are as follows<sup>[2]</sup>:

Purchase

or sale of immovable property by NRI or OCC

As per the Foreign Exchange Management

(Permissible Capital account transactions) Regulations, 2000 read with Foreign

Exchange Management (Acquisition and transfer of immovable property in India) Regulations 2000, any immovable property other than agricultural land, plantation or farmhouse can be purchased by a person resident outside India or

Overseas Citizen of India. Further, an NRI or OCC may transfer any immovable property to a person resident in India, or transfer any immovable property to other NRI or OCC except agricultural land, plantation or a farmhouse.

Purchase

of property by the person who is an Indian holding foreign passport

The

same rule, as mentioned above, is applicable to a person of Indian origin which

provide an opportunity to hold dual citizenship which in fact was considered as

unconstitutional and subsequently there was an amendment to the Citizenship Act

in Citizenship Amendment Act, 2015, and it was made mandatory for a person holding foreign passport to acquire Indian citizenship vide overseas citizen of

India card. Further, the amendment also linked the Overseas Citizenship card with a person of Indian origin. As per the amendment, an Indian holding a foreign

passport can acquire property only after obtaining an Overseas Citizen of India

(OCI) card.

Inheritance

of property or acquire by way of gift

As noticed, there is no restriction in FEMA

1999 nor in the Foreign Exchange Management (Transfer and acquisition of immovable property) Regulations, 2000 for acquiring the property by way of gift

from the person resident in India. The NRI or OCC can acquire any immovable property in India from a person resident outside India who had acquired the same in accordance with the FEMA laws or any immovable property either agricultural or plantation or farmland from a person resident in India.

Property acquired by NRI through Indian spouse

As per Foreign Exchange Management

Regulation (Transfer and Acquisition of immovable property) 2000, spouse of NRI

who is not an NRI himself, is allowed to acquire property in India, however, they have limitations on the kind of properties and the number of properties that can be purchased by them. They can acquire any immovable property (but not

more than one) except agricultural land and plantation farms provided the marriage between Indian resident and the NRI spouse is registered and subsisted

for a continuous period of not less than two years preceding the acquisition

of

such property and that NRI spouse should not be prohibited from such acquisition.

Property

purchased through a company

Foreign companies established in

accordance with FEMA can purchase immovable properties for their business purposes

only. If the foreign companies have established a liaison office in India then

they can only acquire the property on the basis of a lease for the term of not

exceeding five years. Therefore, an NRI cannot acquire property through the company.

Mode payment for the purchase of

immovable property by an NRI

The payment can be made by a Non-resident investor through the following modes:

- Normal banking channels
- Foreign Currency Non-resident account(FCNR)
- Non-resident Indian accounts(NRI)
- Non- resident rupee account(NRE)
- Non-resident ordinary rupee account(NRO)

Repatriation of sale

proceeds of immovable property in India

If a person resident outside India

acquired the immovable property situated in India from the following modes then

he cannot repatriate the sale proceeds from such property without the prior permission from the RBI:

- If the property is acquired by him by way of inheritance
- If the property was acquired by him when he was resident of India

However, repatriation up to 1 million

USD is allowed for a person of Indian Origin/Non-resident Indians if the property is acquired by him through the following persons:

- Immovable property situated in India acquired from a person resident in India by way of inheritance
- From a person who has retired from employment in India
- From a person who has inherited immovable property from the spouse who is resident in India

But if the sale proceeds of immovable

property should be repatriated then it is subject to the following conditions:

- The immovable property should be acquired in accordance with the provisions of FEMA.
- The amount paid for acquisition should be any one of the permissible modes of payment.
- If the immovable property is a residential property then an NRI can repatriate sale proceeds of two properties.

Transfer of property vide

power of attorney

NRI's can execute duly stamped special

power of attorney for the execution of sale of the property held by NRI,

whereas general power of attorney can be executed for the purpose of

management

of day to day affairs. The execution of the sale by the General power of

attorney (GPA) holder is considered invalid as the rule implemented after the

landmark

judgement of the Supreme Court in the case of *Suraj Lamp and Industries Pvt.*

*Ltd v State of Haryana*[3]

wherein it was held that sale transactions cannot be made through agreement

to

sell or general power of attorney. The

intention of the Supreme Court behind this order was to protect the interest

of

the NRI in the property.

Limitations regarding the remittance

of money

NRI's, as per the Liberalised Remittance

Scheme, can remit only up to 2,50,000 \$ per year through rental income or

sale

proceeds from India.

Remedies available to a

non-resident India in case dispute relating to the property

An NRI can avail of any remedies as is

availed by the Indian citizen. If there is any dispute regarding the

property,

he can approach any court of law and forums for the relief. He can also

approach the Real Estate Regulatory and Development Authority for remedies.

Conclusion

On the analysis of the above, we

observe that restrictions have been imposed upon an NRI regarding not only

the sale

or purchase of the immovable property but also upon repatriation of the sale

proceeds. The reason behind these

restrictions are:

- To keep control over the capital account transactions
- To prevent imbalance in the Indian economy which may occur due to excessive foreign currency transactions.
- [1] Master Direction – Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999 (Updated as on April 11, 2018)
- [2][https://mha.gov.in/PDF\\_Other/40CIcardholder\\_AComparativechart\\_15112019.pdf](https://mha.gov.in/PDF_Other/40CIcardholder_AComparativechart_15112019.pdf)
- [3] (2012) 1 SCC 656

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