

Can NRIs invest in immovable property in India?

India's real estate has always been one of the investment opportunities for investors to explore due to the high returns it has offered. More so now, thanks to the implementation of the Real Estate (Regulation and Development) Act, 2016, (RERA), which aims at protecting consumer rights and increasing transparency.

The good news is that even non-resident Indians can invest in this sector under the extant foreign exchange regulations. Non-resident Indians include Non-Resident Indian citizens (NRIs) and Persons of Indian Origin (PIOs).

An NRI is an Indian citizen who is not a resident of India as per foreign exchange regulations. The definition of resident under the foreign exchange regulations of India is different from that of Indian income tax laws.

PIO is defined to include an individual (who is not a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Hong Kong, Macau, Iran, Nepal or Bhutan) who at any time held an Indian passport or whose parents or grandparents were Indian citizens.

Typically, both NRIs and PIOs are allowed to purchase or receive by way of gift any immovable property in India without permission from the Reserve Bank of India, except an agricultural land, plantation property and a farm house. Further, both NRIs and PIOs are also allowed to inherit any immovable property (including agricultural land, etc.) in India. There is no restriction on the number of immovable properties both NRIs or PIOs may hold.

In case of purchase of an immovable property, payment can be made only out of funds received in India through normal banking channels by way of inward remittance from any place outside India or out of funds held in any Non-Resident External (NRE) account/Foreign Currency Non-Resident (FCNR) account/Non Resident Ordinary (NRO) account maintained in India.

Payment cannot be made through travellers' cheque or foreign currency notes or any other mode.

NRIs can transfer any immovable property in India by way of sale or gift to residents of India, other NRIs or PIOs without requiring any permission. However, agricultural land, plantation property and a farm house can be transferred only to Indian residents.

PIOs can also freely transfer any immovable property other than agricultural land, plantation property and a farm house to Indian residents by way of sale. Agricultural land, plantation property and a farm house can be transferred by way of gift or sale only to a person resident in India who is a citizen of India. PIOs may transfer residential or commercial property in India by way of gift to Indian residents, NRIs and PIOs.

In case of sale of immovable property (other than an agricultural land, plantation property and a farm house), the funds can be freely remitted out of India, subject to the following conditions:

- The acquisition of immovable property was made in compliance with the foreign exchange regulations existing at the time of acquisition
- The sale proceeds being repatriated cannot be more than the amount paid for acquiring immovable property in foreign exchange

It is pertinent to note that in the case of sale of residential property, the repatriation of sale

proceeds is restricted to not more than two such properties.

Further, remittances out of balance held in NRO account can be made only up to \$1 million per financial year. In case the property was acquired by way of a gift, the sale proceeds may be received in the NRO account for remittance purposes. However, all the remittances should be made only after making payment of applicable taxes (both direct and indirect) in India.

Lastly, foreign nationals of non-Indian origin, resident outside India, can only acquire immovable property in India through inheritance from a person resident in India. Further, such individuals can transfer immovable property only with prior permission of RBI.

The above information is general information and specific advice should be sought for any foreign investments in India. Also, it is recommendable to check the tax implications that may arise on any transaction before making a decision!

FAQs

1. Is there any limit on the number of properties that NRI or PIO can buy or sell?

There is no restriction on the number of properties that a person can buy or sell. However, there is a restriction on the number of residential properties whose sales proceeds can be freely repatriated. While the proceeds of two residential properties can be freely repatriated, the proceeds from third property and thereafter can be deposited in an NRO account out of which a total of \$1 million per financial year can be freely remitted.

2. Is rental income freely repatriable?

Rental income can be repatriated freely from India without taking any specific permission.

3. How do I repatriate profits or capital gains on sale of a property?

There is a restriction on the remittance of proceeds beyond the principal amount of investment. However, the profits and/or gains can be deposited in the NRO account of the remitter and, consequently, the same can be remitted outside India, provided it does not exceed the threshold of \$1 million per financial year.

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