



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
Central Office Cell, 1<sup>st</sup> Floor  
6, Sansad Marg  
New Delhi - 110 001

Present

**K.K. Vazirani**  
**Assistant General Manager**

Date: January 20, 2020

C.A. No. 108 /2019

In the matter of

**Mr. Rakesh Jain**

House No. 60, Nehru Park Road

Morena (M.P)

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made thereunder, I pass the following:

### **Order**

The applicant, Mr. Rakesh Jain has filed an application dated August 6, 2019 (received in RBI on August 6, 2019) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the Regulations issued thereunder. The contravention sought to be compounded relate to acquisition of agricultural land in India by an NRI without RBI permission, in contravention of the provisions under Regulation 10 of Notification No. FEMA.21(R)/2018-RB dated March 26, 2018 read with Regulation 3(a) of FEMA 21(R) ibid.

2. The brief facts of the case are as follows:



a. Mr. Rakesh Jain, NRI had acquired an immovable property (agricultural land) in India on November 29, 2018, for total consideration of ₹ 4,70,000/- (Rupees four lakh seventy thousand only) vide sale deed executed on November 29, 2018.

The details of the immovable property under reference are given below

Revenue & other Details	Area	Amount	
1. पट.ह.नं. 64 रा.नि.म. 02 Shivpuri, Tehsil and district Shivpuri (MP).	0.300 hectare.	Total cost of Acquisition of property - ₹ 4,70,000/- (Rupees four lakh seventy thousand only)	Total cost of immovable property at the time of transfer - ₹ 4,71,000/- (Rupees four lakh seventy one thousand only).

b. The applicant being an NRI was not eligible to acquire agricultural land in India. Hence the acquisition of agricultural land by Mr. Rakesh Jain without RBI permission results in contravention of Regulation 10 of Notification No. FEMA 21(R)/2018-RB dated March 26, 2018 read with Regulation 3(a) of FEMA 21(R) ibid.

c. Regulation 10 of Notification No. FEMA 21(R)/2018-RB dated March 26, 2018 states that save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.

d. In terms of Regulation 3(a) of Notification NO. FEMA 21(R) ibid., an NRI or OCI may acquire immovable property in India other than agricultural land / farm house / plantation property provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause



e. In view of the above, the applicant was advised to transfer the immovable property vide Reserve Bank letter No. FED.CO.ND(IP)945/10.51.000/2018-19 dated June 10, 2019 to a person resident in India who is a citizen of India within six months from the date of such letter and not to repatriate sale proceeds of the property without prior approval of the RBI subject to compounding of contravention.

f. The property was transferred by the applicant to Mrs. Vijay Jain vide gift deed dated July 8, 2019.

g. The immovable property was acquired at a cost of ₹ 4,70,000/- (Rupees four lakh seventy thousand only) on November 29, 2018. In the course of time, value of the property appreciated to ₹ 4,71,000/- (Rupees four lakh seventy one thousand only). Since the applicant cannot earn by means of appreciation in the value of the property, difference in the value of property at the time of transfer and the purchase price i.e. 1000/- (Rupees one thousand only) has been considered as undue gain.

h. The contravention has been regularized vide Reserve Bank letter No. FED.CO.ND(IP)945/10.51.000/2018-19 dated June 10, 2019 subject to Compounding of contravention.

i. The purchase price of the immovable property under reference i.e. ₹ 4,70,000/- (Rupees four lakh seventy thousand only) has been considered as the amount of contravention. Further, the difference in the value of property at the time of transfer and the purchase price i.e. ₹1000/- (Rupees one thousand only) has been considered as undue gain.

j. The purchase and transfer transactions took place on November 29, 2018 and July 8, 2019 respectively. The period of contravention, therefore, may be considered with effect from November 29, 2018 to July 8, 2019 i.e. 07 months and 09 days.

k. The amount and period of contravention are as follows:

**Amount:** ₹ 4,70,000/- (Rupees four lakh seventy thousand only)

**Undue Gain:** ₹1000/- (Rupees one thousand only)

**Period:** 07 months and 09 days i.e from November 29, 2018 to July 8, 2019.

3. The applicant has contravened Regulation 10 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 notified vide Notification No. FEMA.21(R) ibid.



Regulation 10 of Notification No. FEMA 21(R)/2018-RB dated March 26, 2018 states that save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.

In the instant case, the applicant being an NRI has purchased agricultural land in India without obtaining prior permission from Reserve Bank of India. The aforementioned contravention has been regularized vide Reserve Bank letter No. FED.CO.ND(IP)945/10.51.000/2018-19 dated June 10, 2019 subject to Compounding of contravention.

4. The applicant was given an opportunity for personal hearing vide email dated December 16, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant vide email dated December 16, 2019 has submitted that it is not possible for him to appear for the personal hearing and would like to skip the hearing and proceed further.

5. It has been declared in the compounding application dated August 6, 2019 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has also been declared in the undertaking furnished with the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against him thereafter. Accordingly, the above contravention which is being compounded in this order is subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect. The application for compounding is, therefore, being decided on the basis of the averments/submission made in the application as well as other documents submitted.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the Regulation 10 of Foreign Exchange Management (Acquisition and



Transfer of Immovable Property in India) Regulations, 2018 *notified vide* Notification No. FEMA.21(R) *ibid*. The contravention amount i.e. cost of acquisition of immovable property comes to ₹ 4,70,000/- (Rupees four lakh seventy thousand only) and the period of contravention stands at 07 months 09 days i.e. from November 29, 2018 (date of purchase of property) to July 8, 2019 (date of transfer of property).

7. In terms of Section 13 of the FEMA, 1999, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. After considering the submissions made by the applicant and the entire facts and circumstances of the case, I consider that payment of an amount of ₹ 53,350/- (Rupees fifty three thousand three hundred fifty only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely the contravention of Regulation 10 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 *notified vide* Notification No. FEMA.21(R) *ibid.*, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 53,350/- (Rupees fifty three thousand three hundred fifty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1<sup>st</sup> Floor, 6, Sansad Marg, New Delhi – 110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Delhi within a period of 15 days from the date of this Order. In case of failure to deposit the compounded amount within the stipulated time, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the 20<sup>th</sup> day of January 2020.

**K.K. Vazirani**  
**Assistant General Manager**