

Is power of attorney valid to sell a property if the original owner is mentally incapacitated?

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[Tanmay Patnaik](#)

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A power of attorney (PoA) is a document through which one person (called the principal) authorizes another (called the attorney) to act on their behalf.

Six months ago, my father executed a registered power of attorney (PoA) in my favour to sell his immovable property in India. A month ago, he unfortunately slipped into a coma. We have potential buyers lined up. Can I still sell the immovable property under that PoA?

-Name withheld on request

A power of attorney (PoA) is a document through which one person (called the principal) authorizes another (called the attorney) to act on their behalf. This could be for a single, specific transaction, such as selling an individual property, or it could be more general, covering a wide range of financial and legal matters.

PoAs are a practical way for individuals to ensure that property, investments or legal matters can be managed smoothly by someone they trust. However, there are clear limits on what a PoA can and cannot do. One of the most

common questions is whether a PoA remains valid if the principal becomes mentally incapacitated; for instance, if they fall into a coma.

When a power of attorney lapses

Under Indian law, a PoA is generally treated as a contract of agency. Just as in any contract of agency, the arrangement is only valid as long as the principal has the legal capacity to act. If the principal loses capacity (for instance, by falling into a coma), the authority of the attorney automatically comes to an end. Similarly, the authority ends with the death of the principal.

This rule is based on the simple idea that an attorney may only do what the principal themselves may have done. If the principal is no longer in a position to make decisions, the attorney's authority is also extinguished.

There is one narrow exception. If the PoA is "coupled with interest", it may survive incapacity or even death. This means that the attorney is not just an agent acting for the principal but also has an independent, legally recognised financial or proprietary interest in the property.

Some foreign jurisdictions have dealt with this issue by creating the concept of a "lasting" or "durable" power of attorney. In countries like the UK, individuals can execute such documents to ensure that their attorney's authority continues even if they later lose mental capacity. These arrangements are particularly useful for elderly or vulnerable individuals. In India, however, no such provision exists.