

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No. 13 of 2019  
Date of Decision: 21.03.2022**

Vivek Lamba son of Shri Ishwar Singh Lamba, 635, Tower-3, HEWO Apartment Part-2, Plot No.41, Sector-56, Gurugram, Haryana-122011.

Appellant

Versus

M/s S.S. Group Private Limited, Regd. Office at 4<sup>th</sup> Floor, The Plaza, M.G. Road, Gurgaon (now M/s S.S. Group Pvt. Ltd. at Plot No.77, Sector-44, Gurugram) through its Authorised Signatory, Office Incharge/Director.

Respondent

**CORAM:**

Justice Darshan Singh (Retd),  
Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Chairman  
Member (Judicial)  
Member (Technical)

**Argued by:** Shri Vikas Chaudhary, Advocate, learned counsel for the appellant.

Shri Aashish Chopra, learned Senior Advocate, with Ms. Sugandha Kundu, Advocate, learned counsel for the respondent.

**ORDER:**

**JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred against the order dated 31.10.2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the

‘Authority’), whereby Complaint No. 33 of 2018 filed by the appellant/allottee was disposed of with the following directions: -

- “(i) As per provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016, complainant is entitled for interest on the amount which he has deposited with the builder at the prescribed rate of interest i.e. 10.45% per annum. Since no possession has been delivered, as such, builder shall give cumulative interest till date. This amount shall be paid from due date of possession i.e. 16.1.2017. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.*
- (ii) As per the commitment made by the builder in his application for registration of the project, the due date of handing over the possession is 31.12.2019. If the builder in all probabilities fails to deliver possession on committed date, in that case, complainant shall be entitled to seek refund.”*

2. As per averments in the complaint, the appellant-complainant booked a flat with the respondent-promoter on

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21.06.2012 by paying Rs.7,50,000/-. The total sale consideration of the flat was Rs.91,10,925/-. A "Flat Buyer's Agreement" (Annexure A-4) dated 16<sup>th</sup> October, 2013 (for short 'the buyer's agreement') was executed between the parties. The appellant-allottee was allotted Unit No.4D, Tower T-2, 4<sup>th</sup> Floor, in the project namely "The Leaf Sector-85, Gurugram, Haryana. As per Clause 8.1 of the buyer's agreement, the possession of the flat was to be delivered within 36 months plus 90 days as grace period from the date of signing the agreement and thus the possession was to be delivered by 16.01.2017. As per Clause 8.3 of the buyer's agreement, in case of default in delivery of possession within the above said period, the appellant-allottee was entitled to receive compensation for delay at the rate of Rs.5/- per sq. ft. per month for the delayed period. The appellant-allottee paid a total sum of Rs.68,32,617/- to the respondent-promoter on different dates from period June 2012 to February, 2018, but the respondent-failed to deliver possession to the appellant. Hence the appellant-allottee filed complaint before the learned Authority claiming the relief as under: -

- "a) To refund the sum of Rs.6832617/- along with interest @ 18% P.A. from various dates of payment by the complainants till amount is*

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*refunded by respondent, for not handing over the possession of flat till date.*

- b) To pay Rs.10,00,000/- as penalty/compensation on account of mental agony and physical harassment to the complainant occurred to him due to deficiency of service by the respondent.*
- c) To award a sum of Rs.55,000/- for this forced litigation.”*

3. The respondent/promoter contested the complaint on the grounds, *inter alia*, that the appellant sought claim of refund of the amount along with interest and compensation, which would be liable for adjudication by the Adjudicating Officer and not by the learned Authority. It is further pleaded that the appellant, in any event, cannot get his claims adjudicated under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the ‘Act’) and the Haryana Real Estate (Regulation and Development) Rules, 2017 framed there under, *inter alia*, keeping in view the fact that the project in question is/was not even registered with the learned Authority as on date of filing the complaint, even though the promoter had applied for its registration. It is pleaded that no such agreement, as referred to under the provisions of the Act and the Rules, has been executed between the allottee and the promoter. Rather, the

agreement in question is the flat buyer's agreement, executed much prior to coming into force the Act. The adjudication of the complaint for interest and compensation, as provided under Sections 12, 14, 18 and 19 of the Act, has to be in reference to the agreement for sale executed in terms of the Act and the Rules and no other agreement.

4. It is further pleaded that without prejudice to the aforementioned submissions, the appellant-allottee cannot invoke the jurisdiction of the learned Adjudicating Officer in respect of the unit allotted to him, especially when there is an arbitration clause provided in the Flat Buyer's Agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said Agreement or its termination and respective rights and obligations, is to be settled amicably failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of the learned Authority, is misconceived, erroneous and misplaced.

5. It is pleaded that there has been no fault on the part of the respondent due to non-submission of license, as the respondent applied for renewal of the said license through letter dated 12.08.2014 before the competent authority i.e.

DTCP, but no renewal thereof had been granted. It is further pleaded that the appellant-allottee himself has not fulfilled his obligations of making timely deposit of the amount liable to be paid by him in terms of the buyer's agreement on basis whereof he has claimed adjudication before the Authority. With these pleadings the respondent-promoter prayed for dismissal of the complaint.

6. After hearing learned counsel for the parties and appreciating the material on record, the learned Authority disposed of the complaint by issuing directions reproduced in the upper part of this order, vide impugned order dated 31.10.2018.

7. Aggrieved with the aforesaid order of the learned Authority, the present appeal has been preferred.

8. We have heard Shri Vikas Chaudhary, Advocate, learned counsel for the appellant, Shri Aashish Chopra, learned Senior Advocate, counsel for the respondent and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the appellant had booked the flat in question on 21.06.2012. The possession of the flat was to be delivered complete in all respects on or before

15.10.2016, but the respondent-promoter has failed to deliver the possession within the stipulated period. Even till date, the appellant has not received any offer with respect to the delivery of possession.

10. He further contended that as per the report of the Local Commissioner dated 09.07.2018, the work was completed only to the extent of 45%. At the time of booking of the flat, it was assured that the possession of the flat would be handed over to the buyers within next three years.

11. He further contended that that the respondent-promoter has also violated the provisions of Section 13 of the Act by receiving about 30% of the total sale consideration of the flat even before entering into the flat buyer's agreement.

12. Learned counsel for the appellant further contended that in the present case, the appellant only press for the grant of relief of refund of the amount deposited by the appellant with the respondent-promoter along with interest at the prescribed rate from the date of the respective deposits. He contended that the appellant does not claim any compensation in the present case. To claim the compensation, if any, the appellant will avail the

separate remedy. Thus, he contended that the learned Authority has wrongly declined the claim of the appellant for grant of refund along with interest.

13. On the other hand, Shri Aashish Chopra, learned Senior Advocate, counsel for the respondent contended that, in addition to the other reliefs, the appellant has sought the relief of compensation. The learned Authority had no jurisdiction to entertain the complaint for grant of the relief of refund and compensation along with interest. The same would fall within the jurisdiction of the Adjudicating Officer, as per Sections 71 and 72 of the Act. He contended that as per Section 71(3) of the Act, it was the Adjudicating Officer who was to hold the inquiry with respect to the provisions of Sections 12, 14 18 and 19 of the Act. The complainant was required to file claim in Form 'CAO' as per Rule 29 of the Rules, whereas the appellant has submitted the complaint in Form 'CRA' as per the provisions of Rule 28 of the Rules.

14. He further contended that the Hon'ble Punjab and Haryana High Court vide judgment/order dated October 16, 2020 in Civil Writ Petition No.38144 of 2018 titled as '**Experion Developers Pvt. Ltd. Vs. State of Haryana and Others**' has held that where the relief sought



in the complaint is for refund of the amount, and interest on the refund amount, it is the Authority which has power to examine and determine the outcome of the said complaint. The operation of the said judgment/order of the Hon'ble Punjab and Haryana High Court has been stayed by the Hon'ble Apex Court.

15. He further contended that the learned Authority has not followed the procedure prescribed in the Rules. He contended that the learned Authority has misdirected itself to determine the deemed date of delivery. The allottee shall be entitled to claim the possession of the unit as per the declaration given by the promoter under Section 4(2)(l)(c) of the Act. In the present case, the date of completion of the project has been mentioned as December 31, 2020, which was further automatically extended by the learned Authority for another six months, vide order dated May 26, 2020.

16. He further contended that there is huge outstanding amount to be paid by the allottees, which has resulted in the delay in handing over the possession of the unit. The respondent-promoter was constrained to approach the Special Window for completion of construction of affordable and mid-income Housing projects

Fund-I (for short 'SWAMIH Investment) and a sum of Rs.110 Crores was sanctioned vide letter dated 23.07.2020.

17. He further contended that the learned Authority has ignored the terms and conditions of the agreement. The rights and obligations of the parties flow from the Flat Buyer's Agreement and any direction, which if at all, ought to be in terms thereof and cannot be *de hors* of the same. The directions given in the order are not in consonance of the terms of the agreement and as such are unsustainable in the eyes of law. He further contended that in the present case, no agreement, as provided in the Act and the Rules there under, has been executed between the parties and as such no adjudication much less any directions could have been issued under the provisions of the Act.

18. Finally, learned counsel for the respondent further contended that the appellant had moved an application for amendment of the complaint before the learned Authority, but, it is not known as to whether the said application was allowed by the learned Authority or not. Thus, the amended complaint cannot be taken into consideration. In the original complaint, the appellant has claimed the relief of compensation along with refund and interest, which was not adjudicable by the learned Authority. He further contended that the appellant is

not entitled for the relief of refund, at all, as the appellant himself is at fault as he has not made the payment of the instalments on the due dates and huge amount was outstanding against the appellant.

19. We have duly considered the aforesaid contentions.

20. As per the undisputed facts, the appellant had booked the flat with the respondent-builder in the Group Housing Complex "The Leaf" Sector-85, Gurugram and paid a booking amount of Rs.7,50,000/-. The appellant-allottee had further paid a sum of Rs.26,78,571/- i.e. 30% of the sale price. The buyer's agreement was executed between the parties on 16.10.2013. As per Clause 8.1 of the buyer's agreement, the possession was to be delivered within 36 months plus grace period of 90 days, from the date of signing the agreement. The relevant portion of Clause 8.1 of the agreement reads as under:-

"8.1 Time of handing over the Possession

- (a) Subject to terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the

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Developer, the Developer proposes to hand over the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. The Flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex.”

21. The buyer's agreement was executed between the parties on 16.10.2013. As per Clause 8.1 of the agreement, the due date of delivery of possession of the flat comes to 16.01.2017 (36 months + 90 days as grace period). At the time of filing the complaint, the appellant-allottee had already paid a total sum of Rs.68,32,617/- to the respondent-promoter on different dates from June, 2012 to February, 2018 against the total sale consideration of Rs.91,10,925/-. It is further admitted fact that the respondent-promoter has not been able to deliver the possession of the unit to the appellant-allottee within the stipulated period, as per the terms and conditions of the buyer's agreement, and even on the date of filing the complaint, the date of filing the present appeal and even till date. The respondent has not placed on file the copy of any letter of offer of possession which might had been issued by it to the appellant or the copy of Occupation

Certificate issued by competent authority. So, the fact remains that the respondent-promoter had failed to deliver the possession of the unit booked by the appellant, what to talk up to the due date as per the terms and conditions of the agreement but even till date, though a period of more than 9½ years has passed.

22. Learned counsel for the respondent has vehemently argued that the learned Authority had no jurisdiction to entertain the complaint as in the complaint, along with the relief for refund and interest, the relief of compensation has also been claimed.

23. During the arguments, learned counsel for the appellant has stated at bar that in the present case, the appellant is only claiming refund along with interest and does not press the relief of compensation. The appellant will avail the separate remedy in accordance with law to claim the compensation, if any. Meaning thereby, the appellant has given up the claim of compensation in this case. As per Order XXIII Rule 1 of the Code of Civil Procedure 1908, the plaintiff may at any time after the institution of the suit, abandon his suit or a part of his claim. So, the appellant, by exercising the option in the aforesaid provisions of law, has abandoned his claim of compensation, which is perfectly within the ambit of

law. It is further settled principle of law that the appeal is the continuation of the suit. So, the claim of compensation given up by the appellant at the stage of arguments in appeal, will relate back to the very institution of the complaint and for all intents and purposes, the complaint filed by the appellant shall be considered to be for grant of the relief of refund along with interest in accordance with the provisions of the Act.

24. The issue regarding jurisdiction vis-à-vis the Authority and the Adjudicating Officer has been settled by the Hon'ble Apex Court in the recent judgment titled as ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, wherein the Hon'ble Apex Court has laid down as under:-

86. *From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or*

*penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

25. As per the aforesaid ratio of law that when the claim is for refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of the complaint. Where the relief is for adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71

read with Section 72 of the Act. So, as per the aforesaid authoritative pronouncement of the Hon'ble Apex Court, it is the authority which has jurisdiction to entertain and adjudicate the complaint regarding the refund of the amount and the interest on the interest amount, as claimed by the appellant in the present case. The aforesaid ratio of law laid down by the Hon'ble Apex Court is the complete answer to the contentions raised by learned counsel for the respondent.

26. The same legal position has been reiterated by the Division Bench of our Hon'ble High Court in a bunch of Civil Writ Petitions lead case being **CWP No.6688 of 2021 titled as "Ramprastha Promoters and Developers Pvt. Ltd. Vs. Union of India and Ors."** decided on 13.01.2022, wherein the Hon'ble High Court laid down as under:-

*"26) Hence, in view of the authoritative pronouncement of the Supreme Court in the matter of M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc, as recorded in Para 86 thereof, the Authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such*



*matters would not be with the Adjudicating Officer.”*

27. As per the scheme of the Act, if the promoter fails to deliver the possession of the unit, the allottee has unqualified right to seek refund as per the provisions of Section 18(1)(a) and 19(4) of the Act. As already discussed, in this case, the due date for delivery of possession was 16.01.2017, as per Clause 8.1 of the buyer's agreement dated 16.10.2013. More than six years have passed since the due date of delivery of possession, but still, what to talk of delivery of possession, the possession has not been even offered to the appellant-allottee by the respondent-promoter. So, as the respondent has failed to deliver the possession of the unit to the appellant-allottee in terms of the buyer's agreement, the unqualified right to seek refund of the amount along with interest has accrued to the appellant. The Hon'ble Apex Court in case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (Supra)*** has laid down as under:-

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession*

*of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

28. In view of the aforesaid observations of the Hon'ble Apex Court, as the respondent-promoter has failed to deliver the possession of the unit in terms of the buyer's agreement, the appellant has unqualified right to seek refund along with interest. In our opinion, the delay caused in delivery of possession is not, at all, attributable to the appellant. The appellant has already made the substantial payment of about Rs.77,87,084/-, as shown in the appellant's ledger maintained by the respondent-promoter as on 19.08.2021, whereas the tentative sale price is Rs.91,10,925/-.

29. During the pendency of the complaint, the learned Authority had appointed the Local Commissioner. The Local Commissioner, after visiting the spot and inspecting the

project, has filed the report dated 09.07.2018, wherein it has been categorically mentioned that work has been completed, financially as well as physically, to the extent of 45% only as on 12.06.2018. This inspection was made by the Local Commissioner after about 18 months of the expiry of the due date of possession.

30. Clause (ii) of the relief given in para no.27 of the impugned order reads as under:-

*“(ii) As per the commitment made by the builder in his application for registration of the project, the due date of handing over the possession is 31.12.2019. If the builder in all probabilities fails to deliver possession on committed date, in that case, complainant shall be entitled to seek refund.”*

31. Even, as per the aforesaid direction of the learned Authority, if the respondent-promoter failed to deliver the possession by 31.12.2019, the promoter shall be entitled to seek refund. Now, we are in March, 2022. More than two years have passed from the aforesaid date, but, the respondent has failed to deliver the possession. Thus, even as per the observations in the impugned order, the appellant has become entitled for refund. Learned counsel for the respondent has contended that the word “seek refund”

mentioned by the learned Authority implies that the appellant should move fresh complaint for refund, but we do not find any substance in this plea as the appellant has already sought the relief of refund along with interest in the present complaint. So, he cannot be directed to start another round of litigation to seek the relief/claim, for which he has already become entitled even on the date of filing the present complaint.

32. Learned counsel for the respondent has also raised certain technical and legal contentions; that the due date of delivery of possession shall be as per the declaration filed under Section 4(2)(l)(c) and there is no order of the Authority to allow the application moved by the appellant for amendment of the complaint. It has been repeatedly observed by this Tribunal by relying upon the ratio of law laid down by the Hon'ble Bombay High Court in case ***Neel Kamal Realtors Suburban Pvt. Ltd. &anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB)*** that declaration under Section 4(2)(l)(c) is only to save the promoter from the penal consequences. As far as the delivery of the unit to the allottee is concerned, it shall be governed by the terms and conditions of the agreement and the date mentioned therein shall not be extended by the unilateral declaration filed by the promoter

under Section 4(2)(l)(c) of the Act before the learned Authority while getting the project registered. With advantage, we can refer to the observations of the Hon'ble Bombay High Court in case **Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others** (Supra), as under:-

*“Section 4(2)(l)(c) enables the promoter to revise the date of completion of project and hand over possession. **The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale.** Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. **In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale.**”*

33. In case **Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others** (Supra), the Hon'ble Bombay High Court by taking note of the provisions of section 4(2)(l)(c) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The fresh time line independent of the time stipulated

in the agreement is given in order to save the developer from the penal consequences but he is not absolved of the liability under the agreement for sale. Thus, in view of the ratio of law laid down in the case referred to above, the respondent-builder was required to offer the possession of the unit to the appellant-allottee as per the terms and conditions of the agreement, failing which the appellant-respondent will be entitled to claim the remedies as provided under section 18 of the Act. The date of completion unilaterally mentioned in the declaration under Section 4(2)(l)(c) of the Act will not extend the period of delivery of possession, as mentioned in the buyer's agreement dated 16.10.2013, executed between the parties.

34. Admittedly, the appellant could not show us any order passed by the learned Authority to allow the application for amendment of the complaint. It has been generally noticed that the learned Authority does not pass any order on such miscellaneous applications, which should have been passed in accordance with law. In the absence of any such order, at the most, we can ignore the amended complaint, and therefore the original complaint filed by the appellant-complainant shall be taken into consideration and that will not dislodge the claim of

the appellant, as even in the original complaint, the appellant has claimed the relief of refund along with interest.

35. No other point was argued before us by either of the parties.

36. Thus, keeping in view our aforesaid discussions, the respondent has failed to deliver the possession of the unit allotted to the appellant-allottee within the stipulated date under the flat buyer's agreement dated 16.10.2013, and even till date. So, the appellant has certainly become entitled to seek the refund of the amount paid by him to the respondent-promoter along with interest at the prescribed rate, as per Rule 15 of the Rules.

37. Consequently, the present appeal is hereby allowed. The relief granted by the learned Authority in the impugned order dated 31.10.2018 is hereby modified. It is held that the appellant-allottee is entitled for refund of the amount of Rs.77,87,084/-, as shown in the appellant's ledger maintained by the respondent-promoter, as on 19.08.2021, along with interest at the rate prescribed as per Rule 15 of the Rules i.e. 9.3% per annum prevailing as on today. The interest shall be calculated from the dates of respective payments received by the respondent-promoter from the appellant-allottee, till the date of realization.

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38. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

39. File be consigned to the record.

Announced:  
March 21, 2022

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

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