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AGREEMENT TO SELL IN INDIA: VALIDITY, ENFORCEABILITY, AND WHAT SHAPES THE ODDS

A doctrinal study of contract formation, evidence, specific performance, and title

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Abstract

An agreement to sell is often treated as if it were a sale deed. Indian law draws a sharper line. A contract for the sale of immovable property may create a binding personal obligation to complete a sale, but section 54 of the Transfer of Property Act, 1882 provides that the contract does not, by itself, create an interest in or charge on the property. Ownership ordinarily passes only through a duly stamped and registered conveyance. This distinction frames the article's central inquiry: when is an agreement valid, when can it be proved and used in court, and when is a claimant likely to obtain specific performance? The analysis examines the Indian Contract Act, the Transfer of Property Act, registration and stamp requirements, the Specific Relief Act as amended in 2018, and Article 54 of the Limitation Act. It also considers oral and partly signed agreements, electronic records, possession, title defects, readiness and willingness, and later purchasers. The article argues that "enforceability probability" is not a single percentage. It is a sequence of conditional questions about formation, proof, remedy and practical completion. No reliable national base rate supports a numerical win prediction; a disciplined legal assessment should therefore use transparent qualitative indicators and state-specific caveats.

Keywords: agreement to sell; specific performance; registration; stamp duty; readiness and willingness; limitation; property title

1. Introduction

Agreements to sell sit at the centre of ordinary property transactions. They record a bargain: one party promises to sell an identified property on agreed terms, and the other promises to buy and pay. Buyers may pay an advance, take possession, or register the agreement and then assume that ownership has already passed. Sellers may take the opposite view and treat the agreement as no more than a preliminary note. Both assumptions can be wrong.

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Indian law recognises a contract for sale as a meaningful legal instrument. It can support a suit for specific performance, damages or other relief. Yet the contract is not itself a conveyance. Section 54 of the Transfer of Property Act, 1882 (TPA) expressly says that a contract for sale does not, of itself, create an interest in or charge on the property. The Supreme Court's decision in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana confirms that an agreement to sell, whether or not accompanied by possession, is not a sale deed and does not transfer title. A buyer's contractual right and a buyer's ownership are therefore different legal positions.

That distinction is only the beginning. A document can be a valid contract but difficult to prove. It may be admissible as evidence of a contract but unable to operate as a transfer. A claimant may establish breach and still fail to secure specific performance because the suit is late, the buyer was not ready and willing to perform, or a statutory bar applies. Conversely, an unregistered agreement may, in the circumstances allowed by the Registration Act, still be received as evidence of the contract in a specific-performance suit.

This article separates those questions instead of using "validity" and "enforceability" as interchangeable labels. It contends that the likelihood of relief should be assessed in stages: contract formation, proof and admissibility, entitlement to the requested remedy, and the practical ability to complete a registered transfer. The result is a more accurate way to discuss the "odds" than assigning unsupported percentages to all agreements to sell.

2. Methodology and Scope

The article uses doctrinal legal research. It reads the central statutes governing contracts, transfer of immovable property, registration, stamp duty, specific relief, limitation and documentary evidence alongside relevant Supreme Court decisions. The discussion reflects the law reviewed through 13 November 2026.

The analysis is pan-India only at the level of central legislation and Supreme Court authority. Registration and stamp laws are affected by State amendments, and land-transfer restrictions may depend on the State, the property's classification, its tenure and the parties' status. The article therefore identifies issues that require local verification without treating any single State's rules as national law. It does not assess a particular agreement or transaction.

The article is qualitative, not actuarial. No reliable, representative nationwide dataset was identified that would establish a general win rate for specific-performance suits based on agreements to sell. Reported decisions are selected disputes, not a representative sample of transactions or filed cases. The article consequently explains the legal factors that move a case toward or away from relief rather than presenting invented numerical probabilities.

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3. Four Questions Hidden in One Document

3.1 Was a valid contract formed?

This is a question of contract law. The court asks whether the parties reached agreement on sufficiently certain terms, had capacity, acted with free consent, and exchanged lawful consideration for a lawful object. If the bargain is void, voidable, unlawful or too uncertain, later registration or payment cannot necessarily repair it.

3.2 Can the claimant prove the bargain?

This is a question of evidence and procedure. A genuine agreement can be disputed, lost, altered or insufficiently stamped. The original document, signatures, communications, payment records, witnesses and subsequent conduct can determine whether the court accepts that the bargain was made and what its terms were. A defect in admissibility or registration may have a narrower consequence than invalidity of the underlying contract.

3.3 Is the chosen remedy available?

A buyer seeking specific performance must satisfy the Specific Relief Act, 1963 (SRA), including its rules on readiness and willingness, statutory bars and limitation. The buyer may instead seek compensation or return of money, but those remedies have their own requirements and must be properly claimed.

3.4 Has ownership passed?

This is a property-transfer question. In an ordinary sale of immovable property, an agreement to sell does not itself convey ownership. A registered agreement is still not the registered sale deed. The stages connect, but success at one does not automatically decide the others.

4. Contract Formation and Substantive Validity

4.1 The Contract Act test

Section 10 of the Indian Contract Act, 1872 provides the starting point. An agreement is a contract if it is made with free consent by parties competent to contract, for lawful consideration and a lawful object, and is not expressly declared void. Sections 11–19 address capacity and consent, including coercion, undue influence, fraud and misrepresentation. Section 23 addresses unlawful consideration or objects, while section 29 makes agreements void when their meaning is uncertain and cannot be made certain.

For an agreement to sell, the bargain must be sufficiently definite to be performed by a court. The parties and their respective capacities should be clear. The property should be identifiable through a reliable description such as its survey or plot number, boundaries, area, title

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particulars and location. The price or a workable method for determining it should be stated. The agreement should explain how and when the balance is paid, what must occur before completion, and who must execute the conveyance. Not every omitted detail makes the contract void; the statutory question is whether the meaning is certain or capable of being made certain. But material gaps and conflicting terms make both proof and specific performance harder.

The price need not already have been paid in full. Section 54 of the TPA contemplates a sale price that is paid, promised, part-paid or part-promised. The mutual promises to transfer and pay can supply consideration. An advance or earnest payment may corroborate the transaction and performance, but its absence does not, by itself, prove that there was no contract. Its amount and legal character can matter greatly to breach, forfeiture and refund.

4.2 Writing, signatures and oral agreements

The central law does not impose a universal rule that every agreement to sell must be signed by both parties in order to exist as a contract. In Aloka Bose v. Parmatma Devi, the Supreme Court explained that an agreement may arise orally, through an exchange of communications, through a document signed by both parties, or through a vendor-signed document delivered to and accepted by the purchaser. The Court's reasoning depended on the absence of an applicable law requiring the agreement to be written, witnessed or registered in that case.

That principle should not be mistaken for a recommendation to rely on an oral bargain. The less the parties recorded, the more the claimant must prove: the precise property, price, conditions, timing, acceptance and any later variation. A one-sided signature can be sufficient where the other party's acceptance is established, but it may invite a factual dispute over whether the document was an offer, a draft or the final agreement. State legislation may also impose formality requirements. A written instrument executed by all parties, with clear schedules and traceable payments, usually gives a much firmer evidentiary foundation.

4.3 Capacity, consent, legality and authority

A signature is not conclusive proof of a valid bargain. A party may challenge capacity, authority, consent or the circumstances of execution. Questions may arise where a party was a minor or lacked capacity, where a company signatory lacked authority, where an agent exceeded a power of attorney, or where consent was allegedly obtained by coercion, undue influence, fraud or misrepresentation. These issues turn on the evidence and the governing statutory rules; a recital that a party signed voluntarily is relevant but not decisive.

The transaction must also be lawful. Land can be subject to restrictions on transfer, consent requirements, tenancy or agricultural-land rules, ceiling legislation, tribal protections, allotment conditions, leasehold terms, acquisition proceedings or court orders. Such restrictions

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may affect the legality of the promised sale or the parties' ability to perform. A court cannot order a transaction contrary to a statutory prohibition merely because the parties agreed to it.

4.4 The seller's title and the purchaser's remedy

The seller's title should be examined separately from whether a contract was formed. Sections 13 and 17 of the SRA address particular situations involving imperfect title. In specified circumstances, a purchaser may require the vendor to make good the contract from an interest later acquired, procure a necessary concurrence, or redeem an encumbrance. The Act also prevents a vendor who knowingly lacks title, or who cannot provide the promised title free from reasonable doubt at completion, from obtaining specific performance in the circumstances stated there.

These provisions do not make title diligence optional. A claim's practical prospects depend on whether the seller owns the property, has authority to sell, can procure the required consents and can deliver the title promised. A co-owner's missing consent, a prior mortgage, a defective succession chain or a restriction on transfer may be curable in one case and fatal in another. The agreement should identify the title documents and approvals that the seller must provide and set out what happens if they cannot be obtained.

5. Registration, Stamp Duty and Evidence

5.1 An agreement is not the conveyance

Section 54 of the TPA defines a sale as a transfer of ownership for a price and generally requires a registered instrument for the transfer of immovable property of the relevant value. It separately defines a contract for sale as an agreement that a sale will take place on settled terms, and says that contract does not, by itself, create an interest in or charge on the property. Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana applies this distinction directly: an agreement to sell, with or without possession, is not a conveyance and is not a substitute for a registered sale deed.

The distinction matters even when the purchaser has paid the whole consideration or has been placed in possession. Payment may support contractual remedies. Possession may have consequences under section 53A of the TPA if the statutory conditions are met. Neither fact alone converts the agreement into ownership. Nor does notarisation substitute for the conveyance and registration required to transfer title.

5.2 Registration and the limited role of section 53A

Under the central Registration Act, 1908, section 17(1A) requires registration of a post-24 September 2001 contract to transfer immovable property for the purpose of section 53A of the

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TPA. If it is not registered, it has no effect for that part-performance purpose. Section 53A is a defensive protection against the transferor in the specified circumstances; it is not a deed of title.

Section 49 of the Registration Act generally restricts the effect and evidentiary use of a document that was required to be registered but was not. Its proviso allows an unregistered document affecting immovable property to be received as evidence of a contract in a suit for specific performance, or as evidence of a collateral transaction not requiring a registered instrument. This means non-registration does not have one universal consequence. The document may be unavailable as a conveyance or as a section 53A shield while still being capable of proving a contract in a properly framed specific-performance action.

The central provisions are not the end of the inquiry. States may amend the Registration Act or enact local rules that make additional documents registrable. The date of execution, the property's location, the presence or absence of possession and the relief for which the document is offered must all be checked before reaching a conclusion.

5.3 Stamp duty

Stamp duty is a separate formality from registration. Section 35 of the Indian Stamp Act, 1899 generally bars a chargeable instrument that is not duly stamped from being admitted in evidence or acted upon until the deficient duty and applicable penalty are paid. The precise duty, the classification of the instrument and the curing procedure depend on the relevant State amendments and stamp schedule. Agreements that hand over possession or give rights beyond a simple promise to sell may be treated differently from agreements without possession.

An unstamped or insufficiently stamped agreement should not automatically be described as void. The immediate statutory issue is often whether the instrument can be acted on until it is impounded or the duty and penalty are paid. Whether a particular defect is curable, what must be paid, and how the instrument may then be used require analysis of the governing State law and the document's terms. A national article should not quote a single stamp-duty rate as if it applied across India.

5.4 Electronic communications and proof

Emails, text messages, payment records and digital files can help prove negotiations, acceptance, payment, extension or refusal. The Bharatiya Sakshya Adhiniyam, 2023 recognises electronic and digital records and sets rules for their proof, including the requirements governing computer output. For proceedings to which it applies, the reliability and provenance of a digital record may therefore be central to the evidentiary case.

That evidentiary point should be kept distinct from contract formalities. The Information

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Technology Act, 2000 generally recognises contracts formed electronically, but its First Schedule excludes contracts for the sale or conveyance of immovable property or an interest in such property from that general electronic regime. A message may still be useful evidence of what the parties discussed or did; it should not be assumed to cure a local writing, stamping or registration requirement. Digital evidence proves facts only to the extent the law admits it and the court finds it reliable.

6. Specific Performance and Other Remedies

6.1 The post-2018 and pre-2018 regimes

The Specific Relief (Amendment) Act, 2018 changed the statutory approach to specific performance. For transactions governed by the amended Act, section 10 says that specific performance shall be enforced, subject to section 11(2), section 14 and section 16. Section 14 lists contracts that cannot be specifically enforced, including contracts involving substituted performance, duties that the court cannot supervise, dependence on personal qualifications, or a determinable nature. Section 16 sets personal bars, including the claimant's failure to prove performance or continuing readiness and willingness.

The amended language is important, but it does not promise a decree to every buyer who produces an agreement. The claimant must still prove the contract, the defendant's breach, the claimant's compliance with essential obligations, limitation and the absence of applicable statutory bars. The statutory change also cannot simply be applied to every pending dispute. In Annamalai v. Vasanthi, the Supreme Court explained that the 2018 amendments to sections 10, 14 and 20 are prospective; agreements made before 1 October 2018 remain governed by the former framework, under which specific performance was discretionary. The transaction date therefore changes the legal test, not merely the wording of a citation.

6.2 Readiness and willingness

For a purchaser seeking specific performance, readiness concerns the capacity to perform, including the financial ability to pay the balance. Willingness concerns the purchaser's intention and conduct. Section 16(c) requires proof that the purchaser performed or was always ready and willing to perform the essential terms on the purchaser's side, unless the seller prevented or waived performance. The explanation to section 16 says that actual tender or deposit of money is not essential unless the court directs it; this does not remove the obligation to prove capacity and conduct.

Evidence should be assessed across the timeline, not only at the moment the suit was filed. Did the purchaser respond when payment fell due? Were funds available through savings, financing

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or another credible source? Did the purchaser request title documents or necessary approvals promptly? Was a completion date attended, a tender made, or a reasoned notice sent when the seller refused? Did the purchaser continue to act consistently with the bargain during the dispute? These facts can support or undermine a claim even where the agreement itself is clear.

In Mohammed Khaleel (D) through Legal Representatives v. Jayamma (2026 INSC 651), the Supreme Court revisited readiness and willingness under section 16(c) as it stood before the 2018 amendment. It described readiness as financial capacity and willingness as intention reflected in conduct, and stressed the continuous nature of the requirement under that earlier text. The case concerned the pre-amendment provision; the current statute's wording and the date of the particular transaction must still be checked.

6.3 Limitation, completion dates and time

Article 54 of the Limitation Act, 1963 prescribes three years for a suit for specific performance. If the contract fixes a date for performance, time runs from that date. If no date is fixed, time runs from when the plaintiff has notice that performance is refused. Limitation is a threshold issue: a strong factual case may still fail if the suit is brought outside the statutory period.

Limitation and the question whether time was of the essence are related but different. A fixed date can trigger Article 54 even where the court must separately decide whether delay amounts to breach or whether the contract remained capable of performance. The answer on time depends on the agreement read as a whole, the property, the bargain's purpose, the parties' conduct, extensions and surrounding circumstances. The familiar shorthand that time is never of the essence in land contracts is unsafe.

K.R. Suresh v. R. Poornima (2025 INSC 617) illustrates the fact-sensitive nature of that inquiry. The agreement before the Court required completion within four months and contained a forfeiture clause; the purchaser did not pay the balance within the stipulated period. The Court assessed the timetable and surrounding circumstances in deciding the parties' obligations and the treatment of the payment. Because that agreement pre-dated the 2018 amendment, the decision should be used for its analysis of timing and the payment clause, not as a blanket statement about the amended specific-performance regime.

6.4 Later purchasers, title and statutory restrictions

A seller's later transfer does not automatically defeat the earlier purchaser. Section 19(b) of the SRA permits specific performance against a person claiming under a title arising after the contract, except a transferee for value who paid in good faith and without notice of the original contract. Notice, value, timing and the transferee's conduct become material. A purchaser who learns that a third party has acquired an interest should promptly consider the necessary

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pleadings and parties to the suit.

Specific performance may also be unavailable where the promised transfer is prohibited or the seller cannot deliver the title required by law. A property may be encumbered, jointly held, under litigation or restricted by its tenure or a statutory condition. Sometimes the seller can clear the encumbrance, procure concurrence or acquire the missing interest; sometimes the legal obstacle cannot be removed. The relevant question is not simply whether a title defect exists, but whether it can be lawfully cured and whether the SRA permits the relief sought.

6.5 Compensation, refund and forfeiture

Specific performance is not the only possible relief. Sections 21 and 22 of the SRA address compensation, possession, partition and refund of earnest money or deposit in the circumstances stated there. A purchaser should expressly claim the alternative relief sought. Section 22 allows a court to permit amendment of the plaint in appropriate circumstances, but a claimant should not assume that the court will award a refund on its own initiative. Contract Act sections 73 and 74 govern compensation for breach and stipulated penalties, subject to their terms.

The words “advance” and “earnest money” do not settle the issue by themselves. The agreement’s language, the purpose of the payment, the point at which it was paid and how it is to be adjusted or forfeited all matter. K.R. Suresh distinguishes earnest money intended to secure performance from a payment that is only part of the price and analyses the forfeiture clause against the contract and the purchaser’s default. Drafting should state the function and consequences of each payment accurately, and parties should preserve evidence of how the amount was calculated and paid.

7. What Shapes the Odds? A Staged Assessment

A useful legal forecast should identify the event whose likelihood is being assessed. The chance that a contract was formed is not the same as the chance that it will be admitted in evidence, that specific performance will be decreed, or that ownership will ultimately be registered in the purchaser’s name. One can describe the stages as a conditional chain: a completed transfer requires a valid contract, proof that the court can use, entitlement to the requested relief, and an executable path to conveyance. The chain is an analytical aid, not a statistical formula or a source of fixed percentages.

The following matrix identifies factors that tend to strengthen or weaken each stage. It does not replace a review of the agreement, State law, title documents and litigation record.

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Assessment stage	Factors that tend to strengthen the case	Factors that tend to weaken the case
Contract formation	Clear mutual assent; competent parties and authorized signatories; lawful object; identifiable property and price; consistent completion terms; reliable execution evidence.	Disputed execution with little corroboration; vague property or price; conflicting versions; incapacity, coercion, fraud, illegality or uncertainty.
Proof and admissibility	Original or credible copy; traceable payments and communications; proper State stamp duty or cure; registration where required; reliable digital-record provenance.	Forgery or unexplained alteration; missing original without a basis for secondary evidence; stamp deficiency left uncured; failure to meet a mandatory local registration rule.
Specific performance	Timely suit; consistent readiness and willingness; prompt notices and completion steps; seller can make good title; no statutory bar; relief properly pleaded.	Article 54 period expired; buyer default or inability to perform; conduct inconsistent with willingness; substituted performance or another statutory bar; protected later purchaser without notice.
Practical completion	Clear title path; required co-owner or authority consent; no transfer restriction; conveyance or decree can be implemented and registered.	Unresolved encumbrance or competing claim; missing consent; statutory transfer restriction; injunction or other obstacle preventing lawful conveyance.

A relative assessment can be expressed as strong, mixed or weak, provided the label is tied to stated facts. **Strong** cases generally combine a clear contract, proof of execution, local-formality compliance, timely action, consistent evidence of the purchaser's capacity and willingness, and a seller who can convey the promised title. **Mixed** cases may have a genuine bargain but a disputed signature, unclear timing, incomplete title or an inconsistent payment record. **Weak** cases often face a fatal formation, limitation, statutory or performance problem, such as a forged agreement, an unidentifiable property, a time-barred suit, an unlawful transfer

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or a purchaser who cannot show readiness and willingness.

Why percentages mislead

A percentage such as "70 per cent likely to be enforced" sounds precise but conceals the question being measured. Does it mean that an agreement is a valid contract, that a court admits the document, that a first-instance decree is obtained, that the decree survives appeal, or that a registered sale is ultimately completed? A number without a defined outcome, population, period, jurisdiction and dataset is not a probability estimate; it is an unsupported impression.

Reported judgments also reflect selection effects. They capture disputes that reached a reported decision, not the full set of agreements, settled claims, abandoned suits or unreported outcomes. They cannot by themselves supply a population-wide rate. An empirical study could improve the evidence by defining a cohort of suits, coding transaction dates and case outcomes, separating settlements from adjudications, and accounting for appeals and State variation. Until such data exist, qualitative legal factors are the more honest way to discuss the odds.

8. Drafting and Transaction Safeguards

The strongest opportunity to reduce uncertainty is before the parties sign. A well-drafted agreement should make the bargain and the completion path easy to identify. At minimum, the parties should address the following matters:

- Identify each party, capacity and signatory authority; obtain required co-owner, company, trustee, guardian or agent approvals.
- Describe the property precisely and attach a schedule that matches title and revenue records. Disclose encumbrances, litigation, tenancy, restrictions and approvals that affect transfer.
- State the total consideration, each payment amount and date, the mode of payment, the balance due and how payments will be acknowledged.
- Set a clear completion mechanism: conditions precedent, documents the seller must produce, notice for attendance, the registration office or process, extensions, and responsibility for stamp duty and registration costs.
- Explain possession: whether it is delivered, when, on what conditions and with what legal effect. Do not use possession language as a substitute for the registered conveyance.

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- Define breach, cure periods, termination, refund, earnest money and compensation in terms consistent with the intended legal effect and sections 21–23 of the SRA and section 74 of the Contract Act.
- Check the State's stamp schedule and registration amendments before execution. Complete registration where required, and retain the original agreement, receipts, bank records, communications and proof of notices.
- If performance is disputed, act promptly. Keep evidence of financial capacity and conduct, respond to completion notices, and obtain advice on limitation and the relief to plead before the Article 54 period expires.

These steps do not guarantee that a court will order specific performance. They reduce preventable disputes about what the parties agreed, whether they complied with local formalities, and whether each side was able to perform.

9. Conclusion

An agreement to sell occupies an important but limited place in Indian property law. It may bind the parties to complete a sale, yet it does not itself transfer ownership. The legal analysis must therefore keep contract validity, proof and admissibility, access to a remedy, and title transfer separate.

The likelihood of specific performance depends on the quality and certainty of the bargain, the evidence of execution, compliance with State-specific registration and stamp rules, the purchaser's timely and consistent readiness and willingness, limitation, the seller's ability to make good title, and the rights of later purchasers. For agreements made on or after 1 October 2018, the amended section 10 frames specific performance as the statutory rule subject to specified bars. Earlier agreements remain governed by the former discretionary framework. Neither regime eliminates the need to prove the case.

The title's reference to "odds" should thus be understood as a disciplined, qualitative forecast, not a universal percentage. A clear contract and prompt performance improve a purchaser's position; uncertainty, formal defects, delay, a failure to perform or an unresolvable title restriction can sharply reduce it. The final transfer still requires a lawful conveyance and registration.

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References

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- Transfer of Property Act, 1882, especially sections 53A, 54 and 55.
- Specific Relief Act, 1963, especially sections 10, 13–17 and 19–24, as amended.
- Registration Act, 1908, especially sections 17(1A) and 49.
- Indian Stamp Act, 1899, especially section 35, subject to applicable State amendments.
- Limitation Act, 1963, Schedule, Article 54.
- Bharatiya Sakshya Adhiniyam, 2023, especially sections 61–63 and 85.
- Information Technology Act, 2000, section 1(4), section 10A and First Schedule.

B. Supreme Court Decisions

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